

5:20-1136

JS 44 (Rev. 02/19)

## CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

## I. (a) PLAINTIFFS

ACUITY, A MUTUAL INSURANCE COMPANY

(b) County of Residence of First Listed Plaintiff Sheboygan, WI  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Gordon A. Einhorn, Esquire / Thomas, Thomas & Hafer, LLP  
P. O. Box 999, Harrisburg, PA 17108 / 717-441-7054

## DEFENDANTS

FISHER BROTHERS EXTERIOR, LLC

County of Residence of First Listed Defendant Lancaster, PA  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

## II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☒ Diversity (Indicate Citizenship of Parties in Item III)

## III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   | PTF                        | DEF                        |   | PTF                                   | DEF                                   |
|---|----------------------------|----------------------------|---|---------------------------------------|---------------------------------------|
| Citizen of This State                   | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4            | <input checked="" type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input checked="" type="checkbox"/> 5 | <input type="checkbox"/> 5            |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6            | <input type="checkbox"/> 6            |

## IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input checked="" type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<b>PERSONAL INJURY</b> <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	<b>PRISONER PETITIONS</b> <b>Habeas Corpus:</b> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <b>Other:</b> <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

## V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation - Transfer
- ☐ 8 Multidistrict Litigation - Direct File

## VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

28 U.S.C. 2201-2202

Brief description of cause:

Insurance Declaratory Judgment

## VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

0.00

CHECK YES only if demanded in complaint.

JURY-DEMAND:

☐ Yes ☒ No

## VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE Edward G. Smith

DOCKET NUMBER 5:20-cv-00918-EGS

DATE  
02/25/2020

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

FEB 28 2020 MAG. JUDGE

**EGS**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

## DESIGNATION FORM

(to be used by counsel or pro se plaintiff to indicate the category of the case for the purpose of assignment to the appropriate calendar)

Address of Plaintiff: 2800 South Taylor Dr., Sheboygan, WI 53081

Address of Defendant: 249 South Belmont Rd., Paradise, PA 17562

Place of Accident, Incident or Transaction: Paradise, PA

## RELATED CASE, IF ANY:

Case Number: 5:20-cv-00918-EGSJudge: Edward G. Smith

Date Terminated: \_\_\_\_\_

answered to any of the following questions:

☐ an earlier numbered suit pending or within one year☐ act or grow out of the same transaction as a prior suit terminated action in this court?☐ grant of a patent already in suit or any earlier previously terminated action of this court?☐ labor, social security appeal, or pro se civil rights☒ is related to any case now pending or within one year previously terminated action in

Must sign here

Attorney-at-Law / Pro Se Plaintiff

59006

Attorney I.D. # (if applicable)

THIS CASE IS RELATED TO:

CIVIL ACTION NO.  
CRIMINAL NO.

ASSIGNED TO:

and All Other Contracts

## B. Diversity Jurisdiction Cases:

- ☒ 1. Insurance Contract and Other Contracts
- ☒ 2. Airplane Personal Injury
- ☒ 3. Assault, Defamation
- ☒ 4. Marine Personal Injury
- ☒ 5. Motor Vehicle Personal Injury
- ☒ 6. Other Personal Injury (Please specify): \_\_\_\_\_
- ☒ 7. Products Liability
- ☒ 8. Products Liability - Asbestos
- ☒ 9. All other Diversity Cases (Please specify): \_\_\_\_\_

## ARBITRATION CERTIFICATION

(The effect of this certification is to remove the case from eligibility for arbitration.)

I, Gordon A. Einhorn, counsel of record or pro se plaintiff, do hereby certify:☐ Pursuant to Local Civil Rule 53.2, § 3(c) (2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs:☒ Relief other than monetary damages is sought.DATE: 02/25/2020

Sign here if applicable

Attorney-at-Law / Pro Se Plaintiff

59006

Attorney I.D. # (if applicable)

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.

FEB 28 2020

EGS

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIACASE MANAGEMENT TRACK DESIGNATION FORMAcuity, a Mutual Insurance Co.  
v.

Fisher Brothers Exteriors, LLC

AIR

CIVIL ACTION

NO.

In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a Case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a Case Management Track Designation Form specifying the track to which that defendant believes the case should be assigned.

## SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:

- (a) Habeas Corpus – Cases brought under 28 U.S.C. § 2241 through § 2255. ( )
- (b) Social Security – Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits. ( )
- (c) Arbitration – Cases required to be designated for arbitration under Local Civil Rule 53.2. ( )
- (d) Asbestos – Cases involving claims for personal injury or property damage from exposure to asbestos. ( )
- (e) Special Management – Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases.) ( )
- (f) Standard Management – Cases that do not fall into any one of the other tracks. (x)

2/25/2020  
DateGordon A. Einhorn  
Attorney-at-lawAcuity Insurance  
Attorney for717-441-7054  
Telephone717-237-7105  
FAX Numbergeinhorn@TTHLaw.com  
E-Mail Address

FEB 28 2020

*Handwritten: 17400*  
*Stamp: EGS*  
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*Attorneys for Plaintiff*

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ACUITY, A MUTUAL INSURANCE  
COMPANY

Plaintiff

v.

FISHER BROTHERS EXTERIORS,  
LLC,

Defendant

NO.

CIVIL ACTION – LAW

**COMPLAINT FOR DECLARATORY JUDGMENT**

Plaintiff, Acuity, a Mutual Insurance Company ("Acuity"), by and through its attorneys, Thomas, Thomas & Hafer, LLP, files this Complaint for Declaratory Judgment against Defendant Fisher Brothers Exteriors, LLC, and alleges as follows:

1. Acuity is an insurance company organized and existing under the laws of Wisconsin, with its principal place of business in Sheboygan, Wisconsin.

2. Defendant Fisher Brothers Exteriors, LLC ("Fisher"), is a Pennsylvania limited liability company with its principal place of business located at 249 South Belmont Road, Paradise, Pennsylvania 17562.

*Stamp: FEB 28 2020*

3. This action for declaratory judgment is brought by Acuity pursuant to 28 U.S.C. §2201-2202 in order to determine its rights and responsibilities under an insurance policy issued by it to Fisher.

4. Venue lies in this judicial district pursuant to 28 U.S.C. §1391 in that the issuance of the insurance policy occurred in this district.

**COUNT I  
DECLARATORY JUDGMENT**

5. Acuity issued a BIS-PAK Business Liability and Medical Expenses Policy to Defendant Fisher bearing Policy No. Z10986, which was in effect from January 1, 2017 through January 1, 2018 (the "Policy"). A true and correct copy of the Policy is attached hereto as Exhibit "A."

6. A controversy exists between Acuity and Fisher concerning their respective rights and obligations under the Policy.

7. It is alleged upon information and belief that Fisher was a subcontractor in the construction of a home located at 221 Essex Court, Oxford, Pennsylvania ("the residence") which was later purchased by Paul N. Emery and Georgeanna M. Emery in 2009 from Wyncote Holdings, L.P.

8. On or about December 1, 2017, Paul N. Emery and Georgeanna M. Emery filed a civil action in the Court of Common Pleas of Chester County, Pennsylvania against Woodstone Homes, Inc., Woodstone Custom Homes, L.P., Wyncote Holdings, L.P., West Vincent Capital Corp., Polo Run Capital Corporation, John Bachich and C. O'Brien Architects, Inc. ("the underlying Action").

9. Plaintiffs in the underlying action alleged various deficiencies in the construction of the residence, including moisture intrusion into the residence.

10. On March 13, 2019, Defendant Fisher was joined as an Additional Defendant in the underlying action by the Defendants in the underlying action, Woodstone Homes, Inc., Wyncote Holdings, L.P. and West Vincent Capital Corp. A true and correct copy of the Joinder Complaint is attached hereto as Exhibit "B."

11. The Joinder Complaint states that the Plaintiffs in the underlying action alleged in their Complaint that roofing, fascia, soffit, shutters, exterior millwork, installation of water resistant barriers and flashing were improperly installed at the residence.

12. The Joinder Complaint alleges that Defendant Fisher was retained by Woodstone Homes, Inc. as a subcontractor to complete the roofing, fascia, soffit, shutters, exterior millwork, installation of water resistant barriers and flashing at the residence and that the damage allegedly suffered by Plaintiffs in the underlying action was proximately caused by Defendant Fisher.

13. The Joinder Complaint states claims against Fisher in the underlying action for breach of contract, breach of warranty, negligence and common law indemnity and contribution.

14. Defendant Fisher tendered the underlying action to Plaintiff Acuity asserting a right to defense and indemnity under the Policy.

15. Acuity provided notice to Fisher that coverage may not exist under the Policy for the damages asserted in the underlying Action, and Acuity has been providing a defense to Fisher subject to a reservation of rights as set forth in the letter attached hereto as Exhibit "C."



16. A dispute exists between Acuity and Fisher as to whether Fisher is entitled to coverage under the Policy with respect to the claims brought against it in The Underlying Action.

17. Acuity alleges that coverage does not exist under the Policy for the claims asserted against Fisher in The Underlying Action in that coverage exists only for legal liability for property damage or bodily injury caused by an "occurrence," which term is defined in the Policy. In this regard, the Policy provides in pertinent part as follows:

#### **LIABILITY AND MEDICAL EXPENSES COVERAGES**

**1. Business Liability**

a. We will pay those sums that the insured becomes legally obligated to pay as damages because of *bodily injury, property damage or personal and advertising injury* to which this insurance applies. We will have the right and duty to defend the insured against any suit seeking those damages. However, we will have no duty to defend the insured against any *suit* seeking damages for *bodily injury, property damage or personal and advertising injury* to which this insurance does not apply. We may at our discretion investigate any *occurrence* or any offense and settle any claim or *suit* that may result. But:

- (1) The amount we will pay for damages is limited as described in the Liability and Medical Expenses Limits of Insurance Section; and
- (2) Our right and duty to defend ends when we have used up the applicable Limit of Insurance in the payment of judgments, settlements or medical expenses.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Coverage Extension – Supplementary Payments.

b. This insurance applies:

- (1) To *bodily injury or property damage* only if:
  - (a) The *bodily injury or property damage* is caused by an *occurrence* that takes place in the *coverage territory*; and

- (b) The *bodily injury or property damage* occurs during the policy period.

\* \* \* \* \*

#### **AMENDMENT TO DEFINITION OF OCCURRENCE**

This endorsement modifies insurance provided under the following:

#### **BIS-PAK BUSINESS LIABILITY AND MEDICAL EXPENSES COVERAGE FORM**

\* \* \* \* \*

The definition of Occurrence is replaced by the following:

*Occurrence* means an accident, including continuous or repeated exposure to substantially the same general harmful conditions. *Occurrence* includes:

- A. *Property damage to your work* if the damages work or the work out of which the damage arises was performed on your behalf by a subcontractor and the property damage to *your work* is included in the *products-completed operations hazard*;
- B. *Property damage to property other than your work* that arises out of *your work*.

All other terms, exclusions, limitations and conditions of the policy remain unchanged.

\* \* \* \* \*

18. Acuity alleges that the alleged performance by Fisher of work in an improper or defective manner is not an "occurrence" under the Policy.

19. In addition, coverage does not exist under the Policy pursuant to certain exclusions contained in the Policy including, but not limited to, the following:

#### **EXCLUSIONS**

##### **1. Applicable to Business Liability Coverage**

**This Insurance does not apply to:**

\* \* \* \* \*

##### **b. Contractual Liability**

*Bodily injury or property damage* for which the insured is obligated to pay damages by reason of the assumption of



liability in a contract or agreement. This exclusion does not apply to liability for damages:

- (1) That the insured would have in the absence of the contract or agreement; or

\* \* \* \* \*

m. Damage to Your Work

*Property damage to your work* arising out of it or any part of it and included in the *products-completed operations hazard*.

This exclusion does not apply if the damaged work or the work out of which the damage arises was performed on your behalf by a subcontractor.

\* \* \* \* \*

20. By this action, Acuity seeks a determination that there is no coverage or potential coverage under the Policy and that Acuity does not owe a defense or indemnity for the claims asserted in the underlying action.

WHEREFORE, Plaintiff, Acuity, a Mutual Insurance Company, respectfully requests that the Court enter judgment in its favor and issue a declaratory judgment that Fisher Brothers Exteriors, LLC is not entitled to coverage under the Acuity Policy with respect to those claims made against it by the defendants in the underlying action and that the Court grant such other relief as the Court deems just and proper.

Respectfully submitted,

THOMAS, THOMAS & HAFER, LLP



Gordon A. Einhorn, Esquire  
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Harrisburg, PA 17108  
(717) 441-7054  
[geinhorn@tthlaw.com](mailto:geinhorn@tthlaw.com)  
*Attorneys for Plaintiff*

Date: 2/25/2020  
4266035.1

# EXHIBIT A

# EXHIBIT A


**BIS-PAK  
COVERAGE PART**
**Amended Declarations**

First Named Insured and Address:

FISHER BROTHERS EXTERIORS LLC  
249 S BELMONT RD  
PARADISE PA 17562

Agency Name and Number:

PAUL I SHEAFFER INSURANCE AGENCY  
7747-AD

Policy Number: Z10986

Policy Period: Effective Date: 01-01-17

Expiration Date: 01-01-18

In return for the payment of the premium and subject to  
all the terms of the policy, we agree to provide the  
insurance coverage as stated in the same.

12:01 A.M. standard time at  
your mailing address shown  
in the declarations

**COVERAGE FORMS AND ENDORSEMENTS APPLICABLE TO THIS COVERAGE PART**

Form Number	Form Title	Premium
CB-0006 (08-15)	Bis-Pak Business Liability and Medical Expenses Coverage Form . . . . .	\$
CB-0009 (09-04)	Bis-Pak Common Policy Conditions . . . . .	
CB-1416 (01-10)	Snow Plow Products-Completed Operations Hazard Coverage . . . . .	
CB-7191 (05-13)	Add'l Ins - Owners/Lessees/Contractors - Auto Status when Required - Primary . . . . .	748.00
CB-7201 (04-10)	Property in the Course of Construction . . . . .	3,781.00
IL-7002 (10-90)	Notice of Cancellation Endorsement . . . . .	
CB-7242 (05-13)	Addtl Insd Compl Ops - Primary - Auto Status (Owners, Lessees or Contractors) . . . . .	249.00
CB-1504 (05-14)	Exclusion-Access of Confidential or Personal Info/Data with Limited BI . . . . .	
CB-7410 (08-15)	Civil Authority Changes . . . . .	
CB-7406 (06-15)	Exclusion - Unmanned Aircraft . . . . .	
CB-0417 (01-10)	Employment-Related Practices Exclusion . . . . .	
CB-7237 (08-12)	Exclusion - Habitational Exterior Finish Systems . . . . .	
CB-0577 (04-10)	Fungi or Bacteria Exclusion (Liability) . . . . .	
CB-7262 (08-15)	ACUITY Advantages - Property Coverages . . . . .	
IL-7012 (03-14)	Asbestos Exclusion . . . . .	
CB-7105 (06-13)	Contractor's Equipment . . . . .	619.00
CB-0564 (01-15)	Conditional Exclusion of Terrorism (Relating to Disposition of Federal Act) . . . . .	
CB-0142 (01-06)	Pennsylvania Changes . . . . .	
IL-0120R (03-14)	Pennsylvania Changes - Defense Costs . . . . .	
IL-7092 (02-11)	Amendment to Definition of Occurrence . . . . .	
CB-0002 (08-15)	Deluxe Bis-Pak Property Coverage Form . . . . .	
CB-7268 (08-15)	ACUITY Enhancements - Liability Coverages . . . . .	114.00
CB-1203 (01-10)	Loss Payable Clauses . . . . .	

Page 2

Policy Number: Z10986

Effective Date: 01-01-17

Form Number	Form Title	Premium
CB-7297 (01-15)	Exclusion of Certified Acts of Terrorism .....	
<b>Advance Endorsement Premium .....</b>		<b>\$ 5,511.00</b>

**PREMIUM SUMMARY**

Advance Premium .....	\$ 21,411.00
Advance Endorsement Premium .....	5,511.00
<b>Total Advance Premium .....</b>	<b>\$ 26,922.00</b>

The Total Advance Premium shown above is based on the exposures you anticipated at the time this coverage part began. We will audit this coverage part in accordance with the Bis-Pak Liability and Medical Expenses General Condition entitled Premium Audit - Business Liability at the close of the audit period.

**PROPERTY COVERAGES PROVIDED**

Form: Deluxe

Coverage Item	Premises Number	Building Number	Valuation Basis	Limit of Insurance	Automatic Increase Percentage
Building	001	001	Replacement Cost	\$ 497,249	6%
Business Personal Property	001	001	Replacement Cost	130,000	N/A
Deductible: \$1,000					
Optional Coverages Deductible: \$500					
Business Personal Property	002	001	Replacement Cost	10,000	N/A
Deductible: \$1,000					
Optional Coverages Deductible: \$500					

**DESCRIPTION OF PREMISES**

Premises Number	Building Number	Construction, Occupancy and Location
001	001	FRAME RESIDENTIAL ROOFING CONTRACTOR 249 S BELMONT RD PARADISE PA
002	001	FRAME SHOP 251 S BELMONT RD PARADISE PA

**MORTGAGEHOLDER NAME AND ADDRESS**

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Policy Number: Z10986

Effective Date: 01-01-17

NONE

**LIABILITY COVERAGES PROVIDED**

Coverage Item	Limit of Insurance
Liability and Medical Expenses (Each Occurrence) .....	\$ 1,000,000
Medical Expenses (Any One Person) .....	10,000
Damage to Premises Rented to You .....	250,000
Products-Completed Operations Aggregate Limit .....	3,000,000
General Aggregate Limit (Other Than Products-Completed Operations) .....	3,000,000

**SCHEDULE OF LIABILITY CLASSIFICATIONS**

Premises Number	Building Number	Classification Description	Class Code	Premium Basis <sup>1</sup>	Rate
001	001	Carpentry - Residential, Not Exceeding Three Stories	91340	If Any PA	20.91
001	001	Siding Installation - Not Wood	98967	900,000 PA	15.60
001	001	Contractors-Subcontracted Work	91585	2,000,000 TC	2.95

<sup>1</sup> PA = Payroll - Rate Applies Per \$1,000 of Payroll

TC = Total Cost - Rate Applies Per \$1,000 of Total Cost

**OPTIONAL COVERAGES PROVIDED**

Coverage Item	Limit of Insurance
Forgery and Alteration .....	\$ 2,500
Scheduled Contractors' Equipment - Actual Cash Value .....	See CB-7105
Unscheduled Contractors' Equipment - Actual Cash Value .....	See CB-7105
Business Income from Dependent Properties .....	5,000
Electronic Data .....	10,000
Interruption of Computer Operations .....	10,000
Outdoor Signs .....	10,000
Property in the Course of Construction .....	See CB-7201
ACUITY Advantages - Property Coverages .....	See CB-7262
ACUITY Enhancements - Liability Coverages .....	See CB-7268

Coverage Item	Premises Number	Building Number	Limit of Insurance
Business Income and Extra Expense .....	001	001	Actual Loss Sustained
Money and Securities .....	001	001	

Page 4

Policy Number: Z10986

Effective Date: 01-01-17

Coverage Item	Premises Number	Building Number	Limit of Insurance
Inside the Premises .....			\$ 10,000
Outside the Premises .....			5,000
Accounts Receivable .....	001	001	25,000
Valuable Papers .....	001	001	10,000
Business Income and Extra Expense .....	002	001	Actual Loss Sustained
<i>Money and Securities</i> .....	002	001	
Inside the Premises .....			10,000
Outside the Premises .....			5,000
Accounts Receivable .....	002	001	25,000
Valuable Papers .....	002	001	10,000

**BIS-PAK PLAN**

Contractors

**AUDIT PERIOD**

Annual

**ADDITIONAL NAMED INSURED**

WHO IS AN INSURED includes the following Additional Named Insureds:

NONE

**FIRST NAMED INSURED IS:**

LTD LIAB COMPANY (LLC)



**BIS-PAK BUSINESS LIABILITY AND MEDICAL EXPENSES COVERAGE FORM**

**Index of Policy Provisions**

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**BIS-PAK BUSINESS LIABILITY AND MEDICAL EXPENSES COVERAGE FORM**

Various provisions in this policy restrict coverage. Read the entire policy carefully to determine rights, duties and what is and is not covered.

Throughout this policy the words "you" and "your" refer to the Named Insured shown in the Declarations, and any other person or organization qualifying as a Named Insured under this policy. The words "we," "us" and "our" refer to the Company providing this insurance.

The word "insured" means any person or organization qualifying as such under the Who Is An Insured Section of this policy.

Other words and phrases that appear in italics have special meaning. Refer to the Liability and Medical Expenses Definitions Section.

**LIABILITY AND MEDICAL EXPENSES COVERAGES****1. Business Liability**

- a. We will pay those sums that the insured becomes legally obligated to pay as damages because of *bodily injury, property damage or personal and advertising injury* to which this insurance applies. We will have the right and duty to defend the insured against any *suit* seeking those damages. However, we will have no duty to defend the insured against any *suit* seeking damages for *bodily injury, property damage or personal and advertising injury* to which this insurance does not apply. We may at our discretion investigate any *occurrence* or any offense and settle any claim or *suit* that may result. But:

- (1) The amount we will pay for damages is limited as described in the Liability and Medical Expenses Limits of Insurance Section; and
- (2) Our right and duty to defend ends when we have used up the applicable Limit of Insurance in the payment of judgments, settlements or medical expenses.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Coverage Extension - Supplementary Payments.

**b. This insurance applies:**

- (1) To *bodily injury or property damage* only if:
  - (a) The *bodily injury or property damage* is caused by an *occurrence* that takes place in the *coverage territory*; and
  - (b) The *bodily injury or property damage* occurs during the policy period.
  - (c) Prior to the policy period, no insured listed under item 1 of Who Is An Insured and no *employee* authorized by you to give or receive notice of an *occurrence* or claim, knew that the *bodily injury or prop-*

*erty damage* had occurred, in whole or in part. If such a listed insured or authorized *employee* knew, prior to the policy period, that the *bodily injury or property damage* occurred, then any continuation, change or resumption of such *bodily injury or property damage* during or after the policy period will be deemed to have been known before the policy period.

- (2) To *personal and advertising injury* caused by an offense arising out of your business, but only if the offense was committed in the *coverage territory* during the policy period.

- c. *Bodily injury or property damage* which occurs during the policy period and was not, prior to the policy period, known to have occurred by any insured listed under item 1 of Who Is An Insured or any *employee* authorized by you to give or receive notice of an *occurrence* or claim, includes any continuation, change or resumption of *bodily injury or property damage* after the end of the policy period.

- d. *Bodily injury or property damage* will be deemed to have been known to have occurred at the earliest time when any insured listed under item 1 of Who Is An Insured or any *employee* authorized by you to give or receive notice of an *occurrence* or claim:

- (1) Reports all, or any part, of the *bodily injury or property damage* to us or any other insurer;
- (2) Receives a written or verbal demand or claim for damages because of the *bodily injury or property damage*; or
- (3) Becomes aware by any other means that *bodily injury or property damage* has occurred or has begun to occur.

- e. Damages because of *bodily injury* include damages claimed by any person or organization for care, loss of services or death resulting at any time from the *bodily injury*.

**f. Coverage Extension - Supplementary Payments**

- (1) We will pay, with respect to any claim we investigate or settle, or any *suit* against an insured we defend:
  - (a) All expenses we incur.
  - (b) Up to \$250 for cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which Business Liability Coverage for *bodily injury* applies. We do not have to furnish these bonds.
  - (c) The cost of bonds to release attachments, but only for bond amounts within our Limit of Insurance. We do not have to furnish these bonds.
  - (d) All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or *suit*, including actual loss of earnings up to \$250 a day because of time off from work.
  - (e) All court costs taxed against the insured in the *suit*. However, these payments do not include attorneys' fees or attorneys' expenses taxed against the insured.
  - (f) Prejudgment interest awarded against the insured on that part of the judgment we pay. If we make an offer to pay the applicable Limit of Insurance, we will not pay any prejudgment interest based on that period of time after the offer.
  - (g) All interest on the full amount of any judgment that accrues after entry of the judgment and before we have paid, offered to pay, or deposited in court the part of the judgment that is within our Limit of Insurance.

These payments will not reduce the limit of liability.
- (2) If we defend an insured against a *suit* and an indemnitee of the insured is also named as a party to the *suit*, we will defend that indemnitee if all of the following conditions are met:
  - (a) The *suit* against the indemnitee seeks damages for which the insured has assumed the liability of the indemnitee in a contract or agreement that is an *insured contract*;
  - (b) This insurance applies to such liability assumed by the insured;

- (c) The obligation to defend, or the cost of the defense of, that indemnitee has also been assumed by the insured in the same *insured contract*;
- (d) The allegations in the *suit* and the information we know about the *occurrence* are such that no conflict appears to exist between the interests of the insured and the interest of the indemnitee;
- (e) The indemnitee and the insured ask us to conduct and control the defense of that indemnitee against such *suit* and agree that we can assign the same counsel to defend the insured and the indemnitee; and
- (f) The indemnitee:
  - (i) Agrees in writing to:
    - i. Cooperate with us in the investigation, settlement or defense of the *suit*;
    - ii. Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the *suit*;
    - iii. Notify any other insurer whose coverage is available to the indemnitee; and
    - iv. Cooperate with us with respect to coordinating other applicable insurance available to the indemnitee; and
  - (ii) Provides us with written authorization to:
    - i. Obtain records and other information related to the *suit*; and
    - ii. Conduct and control the defense of the indemnitee in such *suit*.
- (3) So long as the above conditions are met, attorneys' fees incurred by us in the defense of that indemnitee, necessary litigation expenses incurred by us and necessary litigation expenses incurred by the indemnitee at our request will be paid as Supplementary Payments. Notwithstanding the provisions of paragraph 1b(2) of Exclusions, such payments will not be deemed to be damages for *bodily injury* and *property damage* and will not reduce the limits of insurance.

Our obligation to defend an insured's indemnitee and to pay for attorneys' fees and necessary litigation expenses as Supplementary Payments ends when:

- (a) We have used up the applicable Limit of Insurance in the payment of judgments or settlements; or
- (b) The conditions set forth above, or the terms of the agreement described in paragraph (2)(f) above, are no longer met.

## 2. Medical Expenses

- a. We will pay medical expenses as described below for *bodily injury* caused by an accident:
  - (1) On premises you own or rent;
  - (2) On ways next to premises you own or rent; or
  - (3) Because of your operations;
 provided that:

- (1) The accident takes place in the *coverage territory* and during the policy period;
  - (2) The expenses are incurred and reported to us within one year of the date of the accident; and
  - (3) The injured person submits to examination, at our expense, by physicians of our choice as often as we reasonably require.
- b. We will make these payments regardless of fault. These payments will not exceed the Limit of Insurance. We will pay reasonable expenses for:
    - (1) First aid at the time of an accident;
    - (2) Necessary medical, surgical, x-ray and dental services, including prosthetic devices; and
    - (3) Necessary ambulance, hospital, professional nursing and funeral services.

## EXCLUSIONS

### 1. Applicable to Business Liability Coverage

**This Insurance does not apply to:**

#### a. Expected or Intended Injury

*Bodily injury or property damage* expected or intended from the standpoint of the insured. This exclusion does not apply to *bodily injury* resulting from the use of reasonable force to protect persons or property.

#### b. Contractual Liability

*Bodily injury or property damage* for which the insured is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages:

- (1) That the insured would have in the absence of the contract or agreement; or
- (2) Assumed in a contract or agreement that is an *insured contract*, provided the *bodily injury or property damage* occurs subsequent to the execution of the contract or agreement. Solely for the purposes of liability assumed in an *insured contract*, reasonable attorney fees and necessary litigation expenses incurred by or for a party other than an insured are deemed to be damages because of *bodily injury or property damage*, provided:
  - (a) Liability to such party for, or for the cost of, that party's defense has also been assumed in the same *insured contract*; and

- (b) Such attorney fees and litigation expenses are for defense of that party against a civil or alternative dispute resolution proceeding in which damages to which this insurance applies are alleged.

#### c. Liquor Liability

*Bodily injury or property damage* for which any insured may be held liable by reason of:

- (1) Causing or contributing to the intoxication of any person;
- (2) The furnishing of alcoholic beverages to a person under the legal drinking age or under the influence of alcohol; or
- (3) Any statute, ordinance or regulation relating to the sale, gift, distribution or use of alcoholic beverages.

This exclusion applies only if you are in the business of manufacturing, distributing, selling, serving or furnishing of alcoholic beverages.

#### d. Workers' Compensation and Similar Laws

Any obligation of the insured under a workers' compensation, disability benefits or unemployment compensation law or any similar law.

#### e. Employers' Liability

*Bodily injury* to:

- (1) An employee of the insured arising out of and in the course of:

- (a) Employment by the insured; or
- (b) Performing duties related to the conduct of the insured's business; or
- (2) The spouse, child, parent, brother or sister of that employee as a consequence of paragraph (1) above.

This exclusion applies:

- (1) Whether the insured may be liable as an employer or in any other capacity; and
- (2) To any obligation to share damages with or repay someone else who must pay damages because of the injury.

This exclusion does not apply to liability assumed by the insured under an *insured contract*.

f. Pollution

- (1) *Bodily injury* or *property damage* arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of *pollutants*:
  - (a) At or from any premises, site or location which is or was at any time owned or occupied by, or rented or loaned to, any insured. However, this subparagraph does not apply to:
    - (i) *Bodily injury* if sustained within a building and caused by smoke, fumes, vapor or soot produced by or originating from equipment that is used to heat, cool or dehumidify the building, or equipment that is used to heat water for personal use, by the building's occupants or their guests;
    - (ii) *Bodily injury* or *property damage* for which you may be held liable, if you are a contractor and the owner or lessee of such premises, site or location has been added to your policy as an additional insured with respect to your ongoing operations performed for that additional insured at that premises, site or location and such premises, site or location is not and never was owned or occupied by, or rented or loaned to, any insured, other than that additional insured; or
    - (iii) *Bodily injury* or *property damage* arising out of heat, smoke or fumes from a *hostile fire*;
  - (b) At or from any premises, site or location which is or was at any

time used by or for any insured or others for the handling, storage, disposal, processing or treatment of waste;

- (c) Which are or were at any time transported, handled, stored, treated, disposed of, or processed as waste by or for any insured or any person or organization for whom you may be legally responsible; or
- (d) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations if the *pollutants* are brought on or to the premises, site or location in connection with such operations by such insured, contractor or subcontractor. However, this subparagraph does not apply to:
  - (i) *Bodily injury* or *property damage* arising out of the escape of fuels, lubricants or other operating fluids which are needed to perform the normal electrical, hydraulic or mechanical functions necessary for the operation of *mobile equipment* or its parts if such fuels, lubricants or other operating fluids escape from a vehicle part designed to hold, store or receive them. This exception does not apply if the fuels, lubricants or other operating fluids are intentionally discharged, dispersed or released, or if such fuels, lubricants or other operating fluids are brought on or to the premises, site or location with the intent to be discharged, dispersed or released as part of the operations being performed by such insured, contractor or subcontractor.
  - (ii) *Bodily injury* or *property damage* sustained within a building and caused by the release of gases, fumes or vapors from materials brought into that building in connection with operations being performed by you or on your behalf by a contractor or subcontractor; or
  - (iii) *Bodily injury* or *property damage* arising out of heat, smoke or fumes from a *hostile fire*.



- (e) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations if the operations are to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, *pollutants*.
- (2) Any loss, cost or expense arising out of any:
  - (a) Request, demand or order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of *pollutants*; or
  - (b) Claim or *suit* by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of *pollutants*.

However, this paragraph does not apply to liability for damages because of *property damage* that the insured would have in the absence of such request, demand, order or statutory or regulatory requirement or such claim or *suit* by or on behalf of a governmental authority.

**g. Aircraft, Auto or Watercraft**

*Bodily injury or property damage* arising out of the ownership, maintenance, use or entrustment to others of any aircraft, *auto* or watercraft owned or operated by or rented or loaned to any insured. Use includes operation and *loading or unloading*.

This exclusion applies even if the claims allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by an insured, if the *occurrence* which caused the *bodily injury* or *property damage* involved the ownership, maintenance, use or entrustment to others of any aircraft, *auto* or watercraft that is owned or operated by or rented or loaned to any insured.

This exclusion does not apply to:

- (1) Watercraft while ashore on premises you own or rent;
- (2) A watercraft you do not own that is:
  - (a) Less than 51 feet long; and
  - (b) Not being used to carry persons or property for a charge.
- (3) Parking an *auto* on, or on the ways

next to premises you own or rent, provided the *auto* is not owned by or rented or loaned to you or the insured;

- (4) Liability assumed under any *insured contract* for the ownership, maintenance or use of aircraft or watercraft; or
- (5) *Bodily injury or property damage* arising out of:
  - (a) The operation of machinery or equipment that is attached to, or part of, a land vehicle that would qualify under the definition of *mobile equipment* if it were not subject to a compulsory or financial responsibility law or other motor vehicle insurance or motor vehicle registration law where it is licensed or principally garaged; or
  - (b) The operation of any of the following machinery or equipment:
    - (i) Cherry pickers and similar devices mounted on automobile or truck chassis and used to raise or lower workers; and
    - (ii) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment.

**h. Mobile Equipment**

*Bodily injury or property damage* arising out of:

- (1) The transportation of *mobile equipment* by an *auto* owned or operated by or rented or loaned to any insured; or
- (2) The use of *mobile equipment* in, or while in practice for, or while being prepared for, any prearranged racing, speed or stunting activity.

**i. War**

*Bodily injury, property damage or personal and advertising injury*, however caused, arising, directly or indirectly, out of:

- (1) War, including undeclared war;
- (2) Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
- (3) Insurrection, rebellion, revolution, usurped power, or action taken by government authority in hindering or defending against any of these.

**j. Professional Services**



*Bodily injury, property damage or personal and advertising injury* due to rendering or failure to render any professional service. This includes but is not limited to:

- (1) Legal, accounting, advertising, counseling, consulting services or funeral home services;
- (2) Preparing, approving, or failing to prepare or approve maps, drawings, opinions, reports, surveys, change orders, designs or specifications;
- (3) Supervisory, inspection or engineering services;
- (4) Medical, surgical, dental, x-ray or nursing services, treatment, advice or instruction;
- (5) Any health or therapeutic service, treatment, advice or instruction including but not limited to physiotherapy, massage, chiropractic, or the operation or use of sunbathing booths or equipment;
- (6) Any service, treatment, advice or instruction for the purpose of appearance or skin enhancement, hair removal or replacement or personal grooming;
- (7) Optometry or optical or hearing aid services including the prescribing, preparation, fitting, demonstration or distribution of ophthalmic lenses and similar products or hearing aid devices;
- (8) Body piercing services, barber and beauty shops;
- (9) Services in the practice of pharmacy, but this exclusion does not apply to an insured whose operations include those of a retail druggist or drugstore.
- (10) Services in connection with the selling, licensing, franchising or furnishing of your computer software including electronic data processing programs, designs, specifications, manuals and instructions.
- (11) Data processing services rendered by, or that should have been rendered by:
  - (a) The insured; or
  - (b) Any person or organization:
    - (i) For whose acts, errors or omissions the insured is legally responsible; or
    - (ii) From whom the insured assumed liability by reason of a contract or agreement.
- (12) The rendering of, or failure to render, electronic data processing, computer consulting or computer programming services, advice or instruction by:
  - (a) The insured; or

(b) Any person or organization:

- (i) For whose acts, errors or omissions the insured is legally responsible; or
- (ii) From whom the insured assumed liability by reason of a contract or agreement.

This exclusion applies even if the claims allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by an insured, if the *occurrence* which caused the *bodily injury* or *property damage*, or the offense which caused the *personal and advertising injury*, involved the rendering or failure to render of any professional service.

k. Damage to Property

*Property damage* to:

- (1) Property you own, rent or occupy, including any costs or expenses incurred by you, or any other person, organization or entity, for repair, replacement, enhancement, restoration or maintenance of such property for any reason, including prevention of injury to a person or damage to another's property;
- (2) Premises you sell, give away or abandon, if the *property damage* arises out of any part of those premises;
- (3) Property loaned to you;
- (4) Personal property in the care, custody or control of any insured;
- (5) That particular part of real property on which you or any contractor or subcontractor working directly or indirectly on your behalf is performing operations, if the *property damage* arises out of those operations; or
- (6) That particular part of any property that must be restored, repaired or replaced because *your work* was incorrectly performed on it.

Paragraphs (1), (3) and (4) of this exclusion do not apply to *property damage* (other than damage by fire) to premises, including the contents of such premises, rented to you for a period of seven or fewer consecutive days. A separate Limit of Insurance applies to Damage To Premises Rented To You as described in paragraph 3 under the Liability And Medical Expenses Limits Of Insurance Section.

Paragraph (2) of this exclusion does not apply if the premises are *your work* and were never occupied, rented or held for rental by you.

Paragraphs (3), (4), (5) and (6) of this exclusion do not apply to liability assumed under a sidetrack agreement.

Paragraph (6) of this exclusion does not apply to *property damage* included in the *products-completed operations hazard*.

**l. Damage to Your Product**

*Property damage to your product* arising out of it or any part of it.

**m. Damage to Your Work**

*Property damage to your work* arising out of it or any part of it and included in the *products-completed operations hazard*.

This exclusion does not apply if the damaged work or the work out of which the damage arises was performed on your behalf by a subcontractor.

**n. Damage to Impaired Property or Property Not Physically Injured**

*Property damage to impaired property* or property that has not been physically injured, arising out of:

- (1) A defect, deficiency, inadequacy or dangerous condition in *your product* or *your work*; or
- (2) A delay or failure by you or anyone acting on your behalf to perform a contract or agreement in accordance with its terms.

This exclusion does not apply to the loss of use of other property arising out of sudden and accidental physical injury to *your product* or *your work* after it has been put to its intended use.

**o. Recall of Products, Work or Impaired Property**

Damages claimed for any loss, cost or expense incurred by you or others for the loss of use, withdrawal, recall, inspection, repair, replacement, adjustment, removal or disposal of:

- (1) *Your product*;
- (2) *Your work*; or
- (3) *Impaired property*;

if such product, work or property is withdrawn or recalled from the market or from use by any person or organization because of a known or suspected defect, deficiency, inadequacy or dangerous condition in it.

**p. Personal and Advertising Injury**

*Personal and advertising injury*:

- (1) Caused by or at the direction of the insured with the knowledge that the act would violate the rights of another and would inflict *personal and advertising injury*;

- (2) Arising out of oral or written publication of material, if done by or at the direction of the insured with knowledge of its falsity;
- (3) Arising out of oral or written publication of material whose first publication took place before the beginning of the policy period;
- (4) For which the insured has assumed liability in a contract or agreement. This exclusion does not apply to liability for damages that the insured would have in the absence of the contract or agreement.
- (5) Arising out of a breach of contract, except an implied contract to use another's advertising idea in your *advertisement*;
- (6) Arising out of the failure of goods, products or services to conform with any statement of quality or performance made in your *advertisement*;
- (7) Arising out of the wrong description of the price of goods, products or services stated in your *advertisement*;
- (8) Committed by an insured whose business is:

- (a) Advertising, broadcasting, publishing or telecasting;
- (b) Designing or determining content of websites for others; or
- (c) An Internet search, access, content or service provider.

However, this exclusion does not apply to paragraphs a, b and c of Definition 14 *Personal and advertising injury* under Liability And Medical Expenses Definitions.

For the purposes of this exclusion, the placing of frames, borders or links, or advertising, for you or others anywhere on the Internet, by itself, is not considered the business of advertising, broadcasting, publishing or telecasting.

- (9) Arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of *pollutants* at any time.
- (10) With respect to any loss, cost or expense arising out of any:
  - (a) Request, demand or order that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize or in any way responding to, or assessing the effects of *pollutants*.
  - (b) Claim or suit by or on behalf of a

governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing or in any way responding to, or assessing the effects of *pollutants*.

- (11) Arising out of an electronic chatroom or bulletin board the insured hosts, owns or over which the insured exercises control.
- (12) Arising out of the infringement of copyright, patent, trademark, trade secret or other intellectual property rights. Under this exclusion, such other intellectual property rights do not include the use of another's advertising idea in your *advertisement*.

However, this exclusion does not apply to infringement, in your *advertisement*, of copyright, trade dress or slogan.

- (13) Arising out of the unauthorized use of another's name or product in your e-mail address, domain name or metatags, or any other similar tactics to mislead another's potential customers.

**q. Suntanning Operations**

*Bodily injury, personal and advertising injury or property damage* arising out of the ownership, operation or use of any suntanning booth or suntanning device.

**r. Lead**

*Bodily injury, property damage, personal and advertising injury* arising out of the actual, alleged or threatened ingestion, inhalation, absorption, exposure or presence of lead in any form or from any source.

Coverage also does not apply to any loss, cost, expense, fine or penalty arising out of any:

- (1) Request, demand or order that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify, neutralize, dispose of or in any way respond to or assess the effects of lead in any form; or
- (2) Claim or suit by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying, neutralizing, disposing of or in any way responding to or assessing the effects of lead in any form.

**s. Electronic Data**

Damages arising out of the loss of, loss of use of, damage to, corruption of, inability to access, or inability to manipulate electronic data.

As used in this exclusion, electronic data means information, facts or computer programs stored as or on, created or used on, or transmitted to or from computer software (including systems and applications software), on hard or floppy discs, CD-ROMs, tapes, drives, cells, data processing devices or any other repositories of computer software which are used with electronically controlled equipment. The term computer programs, referred to in the foregoing description of electronic data, means a set of related electronic instructions which direct the operations and functions of a computer or device connected to it, which enable the computer or device to receive, process, store, retrieve or send data.

**t. Criminal Acts**

*Personal and advertising injury* arising out of a criminal act committed by or at the direction of the insured.

**u. Recording And Distribution Of Material Or Information In Violation Of Law**

*Bodily injury, property damage, or personal and advertising injury* arising directly or indirectly out of any action or omission that violates or is alleged to violate:

- (1) The Telephone Consumer Protection Act (TCPA), including any amendment of or addition to such law; or
- (2) The CAN-SPAM Act of 2003, including any amendment of or addition to such law; or
- (3) The Fair Credit Reporting Act (FCRA), and any amendment of or addition to such law, including the Fair and Accurate Credit Transaction Act (FACTA); or
- (4) Any federal, state or local statute, ordinance or regulation, other than the TCPA, CAN-SPAM Act of 2003 or FCRA and their amendments and additions, that addresses, prohibits, or limits the printing, dissemination, disposal, collecting, recording, sending, transmitting, communicating or distribution of material or information.

Exclusions c, d, e, f, g, h, i, k, l, m, n, o and r do not apply to damage by fire to premises while rented to you or temporarily occupied by you with permission of the owner. A separate Damage To Premises Rented To You Limit of Insurance applies to this coverage as described in the Limits of Insurance Section of this Coverage Form.

**2. Applicable to Medical Expenses Coverage**

We will not pay expenses for *bodily injury*:

- a. To any insured, except *volunteer workers*.

- b. To a person hired to do work for or on behalf of any insured or a tenant of any insured.
  - c. To a person injured on that part of premises you own or rent that the person normally occupies.
  - d. To a person, whether or not an *employee* of any insured, if benefits for the *bodily injury* are payable or must be provided under a workers' compensation or disability benefits law or a similar law.
  - e. To a person injured while practicing, instructing or participating in any physical exercises or games, sports or taking part in athletic contests.
  - f. Included within the *products-completed operations hazard*.
  - g. Excluded under Business Liability Coverage.
3. **Applicable to Both Business Liability Coverage and Medical Expenses Coverage - Nuclear Energy Liability Exclusion**

This insurance does not apply:

- a. Under Business Liability Coverage, to *bodily injury* or *property damage*:
  - (1) With respect to which an insured under the policy is also an insured under a nuclear energy liability policy issued by Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters or Nuclear Insurance Association of Canada, or would be an insured under any such policy but for its termination upon exhaustion of its Limit of Liability; or
  - (2) Resulting from the *hazardous properties* of *nuclear material* and with respect to which:
    - (a) Any person or organization is required to maintain financial protection pursuant to the Atomic Energy Act of 1954, or any law amendatory thereof; or
    - (b) The insured is, or had this policy not been issued would be, entitled to indemnity from the United States of America or any agency thereof, under any agreement entered into by the United States of America or any agency thereof, with any person or organization.
- b. Under Medical Expenses Coverage, to expenses incurred with respect to *bodily injury* resulting from the *hazardous properties* of *nuclear material* and arising out of the operation of a *nuclear facility* by any person or organization.
- c. Under Business Liability Coverage, to *bodily*

*injury* or *property damage* resulting from the *hazardous properties* of *nuclear material*, if:

- (1) The *nuclear material*:
  - (a) Is at any *nuclear facility* owned by or operated by or on behalf of an insured; or
  - (b) Has been discharged or dispersed therefrom;
- (2) The *nuclear material* is contained in *spent fuel* or *waste* at any time possessed, handled, used, processed, stored, transported or disposed of by or on behalf of an insured; or
- (3) The *bodily injury* or *property damage* arises out of the furnishing by an insured of services, materials, parts or equipment in connection with the planning, construction, maintenance, operation or use of any *nuclear facility*, but if such facility is located within the United States of America, its territories or possessions or Canada, this exclusion (3) applies only to *property damage* to such *nuclear facility* and any property thereat.

- d. As used in this exclusion:

"Byproduct material" has the meaning given it in the Atomic Energy Act of 1954 or in any law amendatory thereof;

"Hazardous properties" include radioactive, toxic or explosive properties;

"Nuclear facility" means:

- (1) Any *nuclear reactor*;
- (2) Any equipment or device designed or used for:
  - (a) Separating the isotopes of uranium or plutonium;
  - (b) Processing or utilizing *spent fuel*; or
  - (c) Handling, processing or packaging *waste*;
- (3) Any equipment or device used for the processing, fabricating or alloying of *special nuclear material* if at any time the total amount of such material in the custody of the insured at the premises where such equipment or device is located consists of or contains more than 25 grams of plutonium or uranium 233 or any combination thereof or more than 250 grams of uranium 235;
- (4) Any structure, basin, excavation, premises or place prepared or used for the storage or disposal of *waste*;

and includes the site on which any of the foregoing is located, all operations conducted on such site and all premises used for



such operations;

"Nuclear material" means *source material*, *special nuclear material* or *byproduct material*;

"Nuclear reactor" means any apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction or to contain a critical mass of fissionable material;

"Property damage" includes all forms of radioactive contamination of property;

"Source material" has the meaning given it in the Atomic Energy Act of 1954 or in any law amendatory thereof;

"Special nuclear material" has the meaning given it in the Atomic Energy Act of 1954 or in any law amendatory thereof;

"Spent fuel" means any fuel element or fuel component, solid or liquid, which has been used or exposed to radiation in a *nuclear reactor*;

"Waste" means any waste material:

- (1) Containing *byproduct material* other than the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its *source material* content; and
- (2) Resulting from the operation by any person or organization of any *nuclear facility* included under paragraphs (1) and (2) of the definition of *nuclear facility*.

### WHO IS AN INSURED

1. If you are designated in the Declarations as:

- a. An individual, you and your spouse are insureds, but only with respect to the conduct of a business of which you are the sole owner.
- b. A partnership or joint venture, you are an insured. Your members, your partners and their spouses are also insureds, but only with respect to the conduct of your business.
- c. A limited liability company, you are insured. Your members are also insureds, but only with respect to the conduct of your business. Your managers are insureds, but only with respect to their duties as your managers.
- d. An organization other than a partnership, joint venture or limited liability company, you are an insured. Your *executive officers* and directors are insureds, but only with respect to their duties as your officers or directors. Your stockholders are also insureds, but only with respect to their liability as stockholders.
- e. A trust, you are an insured. Your trustees are also insureds, but only with respect to their duties as trustees.

2. Each of the following is also an insured:

- a. Your *volunteer workers* only while performing duties related to the conduct of your business, or your *employees* other than either your *executive officers* (if you are an organization other than a partnership, joint venture or limited liability company) or your managers (if you are a limited liability company), but only for acts within the scope of their employment by you or while performing duties related to the conduct of your

business. However, none of these *employees* or *volunteer workers* are insureds for:

- (1) *Bodily injury* or *personal and advertising injury*:
  - (a) To you, to your partners or members (if you are a partnership or joint venture), to your members (if you are a limited liability company), or to a co-*employee* while in the course of his or her employment or performing duties related to the conduct of your business, or to your other *volunteer workers* while performing duties related to the conduct of your business;
  - (b) To the spouse, child, parent, brother or sister of that co-*employee* as a consequence of paragraph (1)(a) above;
  - (c) For which there is any obligation to share damages with or repay someone else who must pay damages because of the injury described in paragraphs (1)(a) or (b); or
  - (d) Arising out of his or her providing or failing to provide professional health care services. However, if you have *employees* who are pharmacists in your retail druggist or drugstore operation, they are insured with respect to their providing or failing to provide professional health care services; or
- (2) *Property damage* to property:
  - (a) Owned, occupied or used by; or
  - (b) Rented to, in the care, custody or control of, or over which physical

control is being exercised for any purpose by;

you, any of your *employees, volunteer workers*, any partner or member (if you are a partnership or joint venture) or any member (if you are a limited liability company).

- b. Any person (other than your *employee* or *volunteer worker*) or any organization while acting as your real estate manager.
- c. Any person or organization having proper temporary custody of your property if you die, but only:
  - (1) With respect to liability arising out of the maintenance or use of that property; and
  - (2) Until your legal representative has been appointed.
- d. Your legal representative if you die, but only with respect to duties as such. That representative will have all your rights and duties under this policy.

3. Any organization you newly acquire or form, other than a partnership, limited liability company or joint venture and over which you maintain ownership or majority interest, will qualify as a Named Insured if there is no other similar insurance available to that organization. However:

- a. Coverage under this provision is afforded only until the 90th day after you acquire or form the organization or the end of the policy period, whichever is earlier;
- b. Coverage does not apply to *bodily injury* or *property damage* that occurred before you acquired or formed the organization; and
- c. Coverage does not apply to *personal and advertising injury* arising out of an offense committed before you acquired or formed the organization.

No person or organization is an insured with respect to the conduct of any current or past partnership, joint venture or limited liability company that is not shown as a Named Insured in the Declarations.

#### LIABILITY AND MEDICAL EXPENSES LIMITS OF INSURANCE

1. The Limits of Insurance shown in the Declarations and the rules below fix the most we will pay regardless of the number of:
  - a. Insureds;
  - b. Claims made or *suits* brought; or
  - c. Persons or organizations making claims or bringing *suits*.
2. The most we will pay for the sum of all damages because of all:
  - a. *Bodily injury, property damage* and medical expenses arising out of any one *occurrence*; and
  - b. *Personal and advertising injury* sustained by any one person or organization;

is the Liability and Medical Expenses Limit shown in the Declarations. But the most we will pay for all medical expenses because of *bodily injury* sustained by any one person is the Medical Expenses Limit shown in the Declarations.
3. The most we will pay under Business Liability Coverage for damages because of *property damage* to a premises while rented to you or in the case of a fire while rented to you or temporarily occupied by you with permission of the owner is the applicable Damage To Premises Rented To You Limit shown for that premises in the Declarations. For a premises temporarily occupied by you, the applicable limit will be the Damage To Premises Rented To You Limit shown in the Declarations.

#### 4. Aggregate Limits

- a. The Products-Completed Operations Aggregate Limit shown in the Declarations is the most we will pay for injury or damage under the *products-completed operations hazard* arising from all *occurrences* during the policy period.
- b. The General Aggregate Limit shown in the Declarations is the most we will pay for the sum of all damages because of all:
  - (1) *Bodily injury, property damage* and medical expenses arising from all *occurrences* during the policy year. This limit applies separately to:
    - (a) Each location owned by or rented to you. A location is a premises involving the same or connecting lots, or a premises whose connection is interrupted only by a street, roadway, waterway or right-of-way of a railroad; and
    - (b) Each of your projects away from a location owned by or rented to you; or
  - (2) *Personal and advertising injury* arising out of all offenses committed during the policy period.

The Limits of Insurance of this policy apply separately to each consecutive annual period and to any remaining period of less than 12 months, starting with the beginning of the policy period shown in the Declarations, unless the policy period is extended after issuance for an additional period of less than 12 months. In that case, the additional period will be



deemed part of the last preceding period for purposes of determining the Limits of Insurance.

## LIABILITY AND MEDICAL EXPENSES GENERAL CONDITIONS

We have no duty to provide coverage under this Coverage Part unless you and any other involved insured have fully complied with the Conditions contained in this Coverage Part.

### 1. Bankruptcy

Bankruptcy or insolvency of the insured or of the insured's estate will not relieve us of our obligations under this policy.

### 2. Duties in the Event of Occurrence, Offense, Claim or Suit

a. You must see to it that we are notified as soon as practicable of an *occurrence* or an offense which may result in a claim. To the extent possible, notice should include:

- (1) How, when and where the *occurrence* or offense took place;
- (2) The names and addresses of any injured persons and witnesses; and
- (3) The nature and location of any injury or damage arising out of the *occurrence* or offense.

b. If a claim is made or *suit* is brought against any insured, you must:

- (1) Immediately record the specifics of the claim or *suit* and the date received; and
- (2) Notify us as soon as practicable.

You must see to it that we receive written notice of the claim or *suit* as soon as practicable.

c. You and any other involved insured must:

- (1) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the claim or *suit*;
- (2) Authorize us to obtain records and other information;
- (3) Cooperate with us in the investigation or settlement of the claim or defense against the *suit*; and
- (4) Assist us, upon our request, in the enforcement of any right against any person or organization that may be liable to the insured because of injury or damage to which this insurance may also apply.

d. No insured will, except at that insured's own cost, voluntarily make a payment, assume any obligation or incur any expense, other than for first aid, without our consent.

### 3. Legal Action Against Us

No person or organization has a right under this policy:

- a. To join us as a party or otherwise bring us into a *suit* asking for damages from an insured; or
- b. To sue us on this policy unless all of its terms have been fully complied with.

A person or organization may sue us to recover on an agreed settlement or on a final judgment against an insured; but we will not be liable for damages that are not payable under the terms of this policy or that are in excess of the applicable Limit of Insurance. An agreed settlement means a settlement and release of liability signed by us, the insured and the claimant or the claimant's legal representative.

### 4. Separation of Insureds

Except with respect to the Limits of Insurance and any rights or duties specifically assigned in this policy to the First Named Insured, this insurance applies:

- a. As if each Named Insured were the only Named Insured; and
- b. Separately to each insured against whom claim is made or *suit* is brought.

### 5. Premium Audit - Business Liability

a. We will compute all premiums for this Coverage Part in accordance with our rules and rates.

b. Premium shown in this Coverage Part as advance premium is a deposit premium only. At the close of each audit period we will compute the earned premium for that period. If a premium payment is due, we will send notice to the First Named Insured. The due date for audit premiums is the date shown as the due date on the bill. If the sum of the advance and audit premiums paid for the policy term is greater than the earned premium, we will return the excess to the First Named Insured.

c. The First Named Insured must keep records of the information we need for premium computation and send us copies at such times as we may request.

## LIABILITY AND MEDICAL EXPENSES DEFINITIONS

1. "Advertisement" means a notice that is broadcast or published to the general public or specific market segments about your goods, products or services for the purpose of attracting customers or supporters. For the purposes of this definition:

- a. Notices that are published include material placed on the Internet or on similar electronic means of communication; and
- b. Regarding websites, only that part of a website that is about your goods, products or services for the purposes of attracting customers or supporters is considered an advertisement.

2. "Auto" means:

- a. A land motor vehicle, trailer or semitrailer designed for travel on public roads, including any attached machinery or equipment; or
- b. Any other land vehicle that is subject to a compulsory or financial responsibility law or other motor vehicle insurance or motor vehicle registration law where it is licensed or principally garaged.

However, *auto* does not include *mobile equipment*.

3. "Bodily injury" means bodily injury, sickness or disease sustained by a person, including death resulting from any of these at any time.

4. "Coverage territory" means:

- a. The United States of America (including its territories and possessions), Puerto Rico and Canada;
- b. International waters or airspace, but only if the injury or damage occurs in the course of travel or transportation between any places included in paragraph a above; or
- c. All parts of the world if:

The injury or damage arises out of:

- (1) Goods or products made or sold by you in the territory described in a above; or
- (2) The activities of a person whose home is in the territory described in a above, but is away for a short time on your business; and
- (3) "Personal and advertising injury" offenses that take place through the Internet or similar electronic means of communication;

provided the insured's responsibility to pay damages is determined in a *suit* on the merits in the territory described in a above or in a settlement we agree to.

5. "Employee" includes a *leased worker*. *Employee* does not include a *temporary worker*.

6. "Executive officer" means a person holding any of the officer positions created by your charter, constitution, by-laws or any other similar governing document.

7. "Hostile fire" means one which becomes uncontrollable or breaks out from where it was intended to be.

8. "Impaired property" means tangible property, other than *your product* or *your work*, that cannot be used or is less useful because:

- a. It incorporates *your product* or *your work* that is known or thought to be defective, deficient, inadequate or dangerous; or
- b. You have failed to fulfill the terms of a contract or agreement;

if such property can be restored to use by:

- a. The repair, replacement, adjustment or removal of *your product* or *your work*; or
- b. Your fulfilling the terms of the contract or agreement.

9. "Insured contract" means:

- a. A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire to premises while rented to you or temporarily occupied by you with permission of the owner is not an *insured contract*.
- b. A sidetrack agreement;
- c. Any easement or license agreement, except in connection with construction or demolition operations on or within 50 feet of a railroad;
- d. An obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;
- e. An elevator maintenance agreement; or
- f. That part of any other contract or agreement pertaining to your business (including an indemnification of a municipality in connection with work performed for a municipality) under which you assume the tort liability of another party to pay for *bodily injury* or *property damage* to a third person or organization. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.

Paragraph f does not include that part of any contract or agreement;

- (1) That indemnifies a railroad for *bodily injury* or *property damage* arising out of

construction or demolition operations, within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, roadbeds, tunnel, underpass or crossing;

- (2) That indemnifies an architect, engineer or surveyor for injury or damage arising out of:
    - (a) Preparing, approving or failing to prepare or approve maps, drawings, opinions, reports, surveys, change orders, designs or specifications; or
    - (b) Giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage; or
  - (3) Under which the insured, if an architect, engineer or surveyor, assumes liability for an injury or damage arising out of the insured's rendering or failure to render professional services, including those listed in (2) above and supervisory, inspection or engineering services.
10. "*Leased worker*" means a person leased to you by a labor leasing firm under an agreement between you and the labor leasing firm, to perform duties related to the conduct of your business. *Leased worker* does not include a *temporary worker*.
11. "*Loading or unloading*" means the handling of property:
- a. After it is moved from the place where it is accepted for movement into or onto an aircraft, watercraft or *auto*;
  - b. While it is in or on an aircraft, watercraft or *auto*; or
  - c. While it is being moved from an aircraft, watercraft or *auto* to the place where it is finally delivered.

But *loading or unloading* does not include the movement of property by means of a mechanical device, other than a hand truck, that is not attached to the aircraft, watercraft or *auto*.

12. "*Mobile equipment*" means any of the following types of land vehicles, including any attached machinery or equipment:
- a. Bulldozers, farm machinery, forklifts and other vehicles designed for use principally off public roads;
  - b. Vehicles maintained for use solely on or next to premises you own or rent;
  - c. Vehicles that travel on crawler treads;
  - d. Vehicles, whether self-propelled or not, on which are permanently mounted:
    - (1) Power cranes, shovels, loaders, diggers or drills; or

(2) Road construction or resurfacing equipment such as graders, scrapers or rollers.

- e. Vehicles not described in a, b, c or d above that are not self-propelled and are maintained primarily to provide mobility to permanently attached equipment of the following types:

- (1) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment; or
- (2) Cherry pickers and similar devices used to raise or lower workers.

- f. Vehicles not described in a, b, c or d above maintained primarily for purposes other than the transportation of persons or cargo.

However, self-propelled vehicles with the following types of permanently attached equipment are not *mobile equipment* but will be considered *autos*:

- (1) Equipment designed primarily for:
  - (a) Snow removal;
  - (b) Road maintenance, but not construction or resurfacing; or
  - (c) Street cleaning.
- (2) Cherry pickers and similar devices mounted on automobile or truck chassis and used to raise or lower workers; and
- (3) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment.

However, *mobile equipment* does not include land vehicles that are subject to a compulsory or financial responsibility law or other motor vehicle insurance or motor vehicle registration law where they are licensed or principally garaged. Land vehicles subject to a compulsory or financial responsibility law or other motor vehicle insurance law or motor vehicle registration law are considered *autos*.

13. "*Occurrence*" means an accident, including continuous or repeated exposure to substantially the same general harmful conditions.

14. "*Personal and advertising injury*" means injury, including consequential *bodily injury*, arising out of one or more of the following offenses:

- a. False arrest, detention or imprisonment;
- b. Malicious prosecution;
- c. The wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling or premises that a person occupies, by or on behalf of its owner, landlord or lessor;
- d. Oral or written publication, in any manner, of material that slanders or libels a person or

organization or disparages a person's or organization's goods, products or services;

- e. Oral or written publication, in any manner, of material that violates a person's right of privacy;
  - f. The use of another's advertising idea in your *advertisement*; or
  - g. Infringing upon another's copyright, trade dress or slogan in your *advertisement*.
15. "*Pollutants*" mean any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.

16. "*Products-completed operations hazard*":

- a. Includes all *bodily injury* and *property damage* occurring away from premises you own or rent and arising out of *your product* or *your work* except:
  - (1) Products that are still in your physical possession; or
  - (2) Work that has not yet been completed or abandoned. However, *your work* will be deemed completed at the earliest of the following times:
    - (a) When all of the work called for in your contract has been completed.
    - (b) When all of the work to be done at the job site has been completed if your contract calls for work at more than one job site.
    - (c) When that part of the work done at the job site has been put to its intended use by any other person or organization other than another contractor or subcontractor working on the same project.

Work that may need service, maintenance, correction, repair or replacement, but which is otherwise complete, will be treated as completed.

The *bodily injury* or *property damage* must occur away from premises you own or rent, unless your business includes the selling, handling or distribution of *your product* for consumption on premises you own or rent.

- b. Does not include *bodily injury* or *property damage* arising out of:
  - (1) The transportation of property, unless the injury or damage arises out of a condition in or on a vehicle not owned or operated by you, and that condition was created by the *loading or unloading* of that vehicle by any insured; or
  - (2) The existence of tools, uninstalled equipment or abandoned or unused materials.

17. "*Property damage*" means:

- a. Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it; or
- b. Loss of use of tangible property that is not physically injured. All such loss of use shall be deemed to occur at the time of the *occurrence* that caused it.

For the purposes of this insurance, electronic data is not tangible property.

As used in this definition, electronic data means information, facts or programs stored as, created or used on, or transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMs, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.

18. "*Suit*" means a civil proceeding in which damages because of *bodily injury*, *property damage*, or *personal and advertising injury* to which this insurance applies are alleged. *Suit* includes:

- a. An arbitration proceeding in which such damages are claimed and to which the *insured* must submit or does submit with our consent; or
- b. Any other alternative dispute resolution proceeding in which such damages are claimed and to which the *insured* submits with our consent.

19. "*Temporary worker*" means a person who is furnished to you to substitute for a permanent *employee* on leave or to meet seasonal or short-term workload conditions.

20. "*Volunteer worker*" means a person who is not your *employee*, and who donates his or her work and acts at the direction of and within the scope of duties determined by you, and is not paid a fee, salary or other compensation by you or anyone else for their work performed for you.

21. "*Your product*" means:

- a. Any goods or products, other than real property, manufactured, sold, handled, distributed or disposed of by:
  - (1) You;
  - (2) Others trading under your name; or
  - (3) A person or organization whose business or assets you have acquired; and
- b. Containers (other than vehicles), materials, parts or equipment furnished in connection with such goods or products.

*Your product* includes:

- a. Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of *your product*; and

- b. The providing of or failure to provide warnings or instructions.

*Your product* does not include vending machines or other property rented to or located for the use of others but not sold.

22. "*Your work*" means:

- a. Work or operations performed by you or on

your behalf; and

- b. Materials, parts or equipment furnished in connection with such work or operations.

*Your work* includes:

- a. Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of *your work*; and

- b. The providing of or failure to provide warnings or instructions.



*Fisher Endorsements***ACUITY ENHANCEMENTS - LIABILITY COVERAGES**

CB-7268(8-15)

This endorsement modifies insurance provided under the following:

BIS-PAK BUSINESS LIABILITY AND MEDICAL EXPENSES COVERAGE FORM

**A. Increased Bail Bond Amount**

Paragraph 1f(1)(b) under Liability and Medical Expenses Coverages is replaced by the following:

- (b) Up to \$1,000 for cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which Business Liability Coverage for *bodily injury* applies. We do not have to furnish these bonds.

**B. Increased Reasonable Expenses Incurred by Insured**

Paragraph 1f(1)(d) under Liability and Medical Expenses Coverages is replaced by the following:

- (d) All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or *suit*, including actual loss of earnings up to \$350 a day because of time off from work.

**C. Newly Acquired Organizations**

Paragraph 3a under Who Is An Insured is replaced by the following:

- a. Coverage under this provision is afforded only until the 180th day after you acquire or form the organization or the end of the policy period, whichever is earlier;

**D. Tenants Legal Liability**

Paragraphs (1), (3) and (4) of the Damage to Property Exclusion do not apply to *property damage* (other than damage by fire or explosion) to premises, including the contents of such premises, rented to you for a period of 8 or more consecutive days.

The most we will pay under this coverage for damages because of *property damage* to any one premises is \$10,000. A \$250 deductible applies.

**E. Knowledge of Claim or Suit**

The following is added to the Duties in the Event of Occurrence, Offense, Claim or Suit Condition:

Knowledge of an *occurrence*, offense, claim or *suit* by an agent or *employee* of any insured shall not in itself constitute knowledge of the insured unless your partners, *executive officers*, directors, managers, members or a person who has been designated by them to receive reports of *occurrences*, offenses, claims or *suits* shall have received such notice from the agent or *employee*.

**F. Broadened Bodily Injury**

The definition of *bodily injury* is amended to include mental anguish.

**G. Unintentional Failure to Disclose Hazard**

The following is added to the Representations Condition in the Bis-Pak Common Policy Conditions:

Based on our dependence upon your representations as to existing hazards, if unintentionally you should fail to disclose all such hazards at the inception date of your policy, we will not reject Liability coverage under this policy based solely on such failure.

**H. Waiver of Subrogation for Written Contracts**

The following is added to the Transfer of Rights of Recovery Against Others to Us Condition under 2 Applicable to Liability Coverage in the Bis-Pak Common Policy Conditions:

We waive any right of recovery we may have against a person or organization because of payments we make for injury or damage arising out of your ongoing operations or *your work* done under a contract with that person or organization and included in the *products-completed operations hazard*. The waiver applies only to a person or organization with whom you have a written contract or agreement in which you are required to waive rights of recovery under this policy. Such contract or agreement must have been executed prior to the *occurrence* causing injury or damage.

**I. Electronic Data Liability**

1. Exclusion 1s is replaced by the following:

This insurance does not apply to:

- s. Access or Disclosure of Confidential or Personal Information and Data-related Liability

- (1) Damages, other than damages because of *personal and advertising injury*, arising out of any access to or disclosure of any person's or organization's confidential or personal information, including patents, trade secrets, processing methods, customer lists, financial information, credit card information, health information or any other type of non-public information; or

- (2) Damages arising out of the loss of, loss of use of, damage to, corruption of, inability to access, or inability to manipulate *electronic data* that does not result from physical injury to tangible property.

This exclusion applies even if damages



are claimed for notification costs, credit monitoring expenses, forensic expenses, public relations expenses or any other loss, cost or expense incurred by you or others arising out of that which is described in paragraph (1) or (2) above.

However, unless paragraph (1) above applies, this exclusion does not apply to damages because of *bodily injury*.

2. The following paragraph is added to Liability and Medical Expenses Limits of Insurance:

Subject to 2 above, \$10,000 is the most we will pay for *property damage* because of all loss of *electronic data* arising out of any one *occurrence*.

3. The following definition is added to Liability and Medical Expenses Definitions:

"*Electronic data*" means information, facts or computer programs stored as or on, created or used on, or transmitted to or from computer software (including systems and applications software), on hard or floppy disks, CD-ROMs, tapes, drives, cells, data processing devices or any other repositories of computer software which are used with electronically controlled equipment. The term computer programs, referred to in the foregoing description of electronic data, means a set of related electronic instructions which direct the operations and functions of a computer or device connected to it, which enable the computer or device to receive, process, store, retrieve or send data.

4. For the purposes of this coverage, the definition of "*property damage*" is replaced by the following:

"*Property damage*" means:

- a. Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it;
- b. Loss of use of tangible property that is not physically injured. All such loss of use shall be deemed to occur at the time of the *occurrence* that caused it; or
- c. Loss of, loss of use of, damage to, corruption of, inability to access, or inability to properly manipulate *electronic data*, resulting from physical injury to tangible property. All such loss of *electronic data* shall be deemed to occur at the time of the *occurrence* that caused it.

For the purposes of this coverage, *electronic data* is not tangible property.

## J. Employee Benefits Liability Coverage

1. The following is added to Liability and Medical Expenses Coverages:

### Insuring Agreement

- a. We will pay those sums that the insured becomes legally obligated to pay as damages because of any act, error or omission, of the insured, or of any other person for whose acts the insured is legally liable, to which this coverage applies. We will have the right and duty to defend the insured against any *suit* seeking those damages. However, we will have no duty to defend the insured against any *suit* seeking damages to which this coverage does not apply. We may, at our discretion, investigate any report of an act, error or omission and settle any *claim* or *suit* that may result. But:

- (1) The amount we will pay for damages is limited as described in paragraph 5 of this coverage; and
- (2) Our right and duty to defend end when we have used up the applicable limit of insurance in the payment of judgments or settlements.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Supplementary Payments.

- b. This coverage applies to damages only if:

- (1) The act, error or omission, is negligently committed in the *administration* of your *employee benefit program*;
- (2) The act, error or omission, did not take place before the original inception date of this coverage nor after the end of the policy period; and
- (3) A *claim* for damages, because of an act, error or omission, is first made against any insured, in accordance with paragraph c below, during the policy period or an Extended Reporting Period we provide under paragraph 6 of this coverage.

- c. A *claim* seeking damages will be deemed to have been made at the earlier of the following times:

- (1) When notice of such *claim* is received and recorded by any insured or by us, whichever comes first; or
- (2) When we make settlement in accordance with paragraph a above.

A *claim* received and recorded by the insured within 60 days after the end of the policy period will be considered to have been received within the policy period, if no subsequent policy is available to cover the "claim".

- d. All *claims* for damages made by an *employee* because of any act, error or omission, or a series of related acts, errors or omissions, including damages claimed by such *employee's* dependents and beneficiaries, will be deemed to have been made at the time the first of those *claims* is made against any insured.

#### **Exclusions**

This coverage does not apply to:

- a. **Dishonest, Fraudulent, Criminal Or Malicious Act**

Damages arising out of any intentional, dishonest, fraudulent, criminal or malicious act, error or omission, committed by any insured, including the willful or reckless violation of any statute.

- b. **Bodily Injury, Property Damage, Or Personal And Advertising Injury**

*Bodily injury, property damage or personal and advertising injury.*

- c. **Failure To Perform A Contract**

Damages arising out of failure of performance of contract by any insurer.

- d. **Insufficiency Of Funds**

Damages arising out of an insufficiency of funds to meet any obligations under any plan included in the *employee benefit program*.

- e. **Inadequacy Of Performance Of Investment/Advice Given With Respect To Participation**

Any *claim* based upon:

- (1) Failure of any investment to perform;
- (2) Errors in providing information on past performance of investment vehicles; or
- (3) Advice given to any person with respect to that person's decision to participate or not to participate in any plan included in the *employee benefit program*.

- f. **Workers' Compensation And Similar Laws**

Any *claim* arising out of your failure to comply with the mandatory provisions of any workers' compensation, unem-

ployment compensation insurance, social security or disability benefits law or any similar law.

- g. **ERISA**

Damages for which any insured is liable because of liability imposed on a fiduciary by the Employee Retirement Income Security Act of 1974, as now or hereafter amended, or by any similar federal, state or local laws.

- h. **Available Benefits**

Any *claim* for benefits to the extent that such benefits are available, with reasonable effort and cooperation of the insured, from the applicable funds accrued or other collectible insurance.

- i. **Taxes, Fines Or Penalties**

Taxes, fines or penalties, including those imposed under the Internal Revenue Code or any similar state or local law.

- j. **Employment-Related Practices**

Damages arising out of wrongful termination of employment, discrimination, or other employment-related practices.

- 2. For the purposes of the coverage provided:
  - a. All references to Supplementary Payments are replaced by Supplementary Payments and Employee Benefits Liability.
  - b. Paragraphs f(1)(b), f(2) and f(3) Coverage Extension - Supplementary Payments do not apply.
- 3. For the purposes of the coverage provided, paragraphs 2 and 4 under Who Is An Insured are replaced by the following:
  - 2. Each of the following is also an insured:
    - a. Each of your *employees* who is or was authorized to administer your *employee benefit program*.
    - b. Any persons, organizations or *employees* having proper temporary authorization to administer your *employee benefit program* if you die, but only until your legal representative is appointed.
    - c. Your legal representative if you die, but only with respect to duties as such. That representative will have all your rights and duties under this coverage.
  - 4. Any organization you newly acquire or form, other than a partnership, joint venture or limited liability company, and over which you maintain ownership or majority interest, will qualify as a

Named Insured if no other similar insurance applies to that organization. However:

- a. Coverage under this provision is afforded only until the 90th day after you acquire or form the organization or the end of the policy period, whichever is earlier.
  - b. Coverage under this provision does not apply to any act, error or omission that was committed before you acquired or formed the organization.
4. For the purposes of the coverage provided, the Liability And Medical Expenses Limits Of Insurance Section is replaced by the following:

#### Limits Of Insurance

- a. The Limits of Insurance shown in d below and the rules below fix the most we will pay regardless of the number of:
  - (1) Insureds;
  - (2) *Claims* made or *suits* brought;
  - (3) Persons or organizations making *claims* or bringing *suits*;
  - (4) Acts, errors or omissions; or
  - (5) Benefits included in your *employee benefits program*.
- b. The Aggregate Limit is the most we will pay for all damages because of acts, errors or omissions negligently committed in the *administration* of your *employee benefit program*.
- c. Subject to the Aggregate Limit, the Each Employee Limit is the most we will pay for all damages sustained by any one *employee*, including damages sustained by such *employee's* dependents and beneficiaries, as a result of:
  - (1) An act, error or omission; or
  - (2) A series of related acts, errors or omissions negligently committed in the *administration* of your *employee benefit program*.

However, the amount paid under this coverage shall not exceed, and will be subject to, the limits and restrictions that apply to the payment of benefits in any plan included in the *employee benefit program*.

- d. Limits of Insurance
 

Each Employee Limit: \$250,000

Aggregate Limit: \$250,000

The Limits of Insurance of this coverage apply separately to each consecutive an-

nual period and to any remaining period of less than 12 months, starting with the beginning of the policy period shown in the Declarations of the policy to which this coverage is attached, unless the policy period is extended after issuance for an additional period of less than 12 months. In that case, the additional period will be deemed part of the last preceding period for purposes of determining the Limits of Insurance.

#### Deductible

- a. Our obligation to pay damages on behalf of the insured applies only to the amount of damages in excess of the deductible amount stated in e below as applicable to Each Employee. The Limits of Insurance shall not be reduced by the amount of this deductible.
  - b. The deductible amount stated in e below applies to all damages sustained by any one *employee*, including such *employee's* dependents and beneficiaries, because of all acts, errors or omissions to which this coverage applies.
  - c. The terms of this coverage, including those with respect to:
    - (1) Our right and duty to defend any *suits* seeking those damages; and
    - (2) Your duties, and the duties of any other involved insured, in the event of an act, error or omission, or *claim*

apply irrespective of the application of the deductible amount.
  - d. We may pay any part or all of the deductible amount to effect settlement of any *claim* or *suit* and, upon notification of the action taken, you shall promptly reimburse us for such part of the deductible amount as we have paid.
  - e. Deductible
 

Each Employee Deductible: \$1,000
5. For the purposes of the coverage provided, Duties In The Event Of Occurrence, Offense, Claim Or Suit Condition is replaced by the following:
2. **Duties In The Event Of An Act, Error Or Omission, Or Claim Or Suit**
    - a. You must see to it that we are notified as soon as practicable of an act, error or omission which may result in a *claim*. To the extent possible, notice should include:
      - (1) What the act, error or omission was and when it occurred; and

- (2) The names and addresses of anyone who may suffer damages as a result of the act, error or omission.
  - b. If a *claim* is made or *suit* is brought against any insured, you must:
    - (1) Immediately record the specifics of the *claim* or *suit* and the date received; and
    - (2) Notify us as soon as practicable.
  - c. You and any other involved insured must:
    - (1) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the *claim* or *suit*;
    - (2) Authorize us to obtain records and other information;
    - (3) Cooperate with us in the investigation or settlement of the *claim* or defense against the *suit*; and
    - (4) Assist us, upon our request, in the enforcement of any right against any person or organization which may be liable to the insured because of an act, error or omission to which this coverage may also apply.
  - d. No insured will, except at that insured's own cost, voluntarily make a payment, assume any obligation or incur any expense without our consent.
  - e. The requirements to notify us can be satisfied by notifying our agent. Notice can be by any means of communication.
6. For the purposes of the coverage provided, the following Extended Reporting Period provisions are added:

#### EXTENDED REPORTING PERIOD

- a. You will have the right to purchase an Extended Reporting Period, as described below, if:
  - (1) This coverage is canceled or not renewed; or
  - (2) We renew or replace this coverage with insurance that:
    - (a) Has an inception date later than the original inception date of this coverage; or
    - (b) Does not apply to an act, er-

ror or omission on a claims-made basis.

- b. The Extended Reporting Period does not extend the policy period or change the scope of coverage provided. It applies only to *claims* for acts, errors or omissions that were first committed before the end of the policy period but not before the original inception date of this coverage. Once in effect, the Extended Reporting Period may not be canceled.
- c. An Extended Reporting Period of five years is available, but only by an endorsement and for an extra charge.

You must give us a written request for the endorsement within 60 days after the end of the policy period. The Extended Reporting Period will not go into effect unless you pay the additional premium promptly when due.

We will determine the additional premium in accordance with our rules and rates. In doing so, we may take into account the following:

- (1) The *employee benefit programs* insured;
- (2) Previous types and amounts of insurance;
- (3) Limits of Insurance available under this coverage for future payment of damages; and
- (4) Other related factors.

The additional premium will not exceed \$100.

The Extended Reporting Period endorsement applicable to this coverage shall set forth the terms, not inconsistent with this Section, applicable to the Extended Reporting Period, including a provision to the effect that the coverage afforded for *claims* first received during such period is excess over any other valid and collectible insurance available under policies in force after the Extended Reporting Period.

- d. If the Extended Reporting Period is in effect, we will provide an extended reporting period aggregate limit of insurance described below, but only for claims first received and recorded during the Extended Reporting Period.

The extended reporting period aggregate limit of insurance will be equal to the dollar amount shown in 4d of this coverage under Limits of Insurance.

Paragraph 4b of this coverage will be amended accordingly. The Each Em-



ployee Limit shown in 4d will then continue to apply as set forth in paragraph 4c.

7. For the purposes of the coverage provided, the following definitions are added to Liability And Medical Expenses Definitions:

a. "Administration" means:

- (1) Providing information to *employees*, including their dependents and beneficiaries, with respect to eligibility for or scope of *employee benefit programs*;
- (2) Handling records in connection with the *employee benefit program*; or
- (3) Effecting, continuing or terminating any *employee's* participation in any benefit included in the *employee benefit program*.

However, *administration* does not include handling payroll deductions.

b. "Cafeteria plans" means plans authorized by applicable law to allow employees to elect to pay for certain benefits with pre-tax dollars.

c. "Claim" means any demand, or *suit*, made by an *employee* or an *employee's* dependents and beneficiaries, for damages as the result of an act, error or omission.

d. "Employee benefit program" means a program providing some or all of the following benefits to *employees*, whether provided through a *cafeteria plan* or otherwise:

- (1) Group life insurance; group accident or health insurance; dental, vision and hearing plans; and flexible spending accounts; provided that no one other than an *employee* may subscribe to such benefits and such benefits are made generally available to those *employees* who satisfy the plan's eligibility requirements;
- (2) Profit sharing plans, employee savings plans, employee stock ownership plans, pension plans and stock subscription plans, provided that no one other than an *employee* may subscribe to such benefits and such benefits are made generally available to all *employees* who are eligible under the plan for such benefits;
- (3) Unemployment insurance, social security benefits, workers' compensation and disability benefits;
- (4) Vacation plans, including buy and

sell programs; leave of absence programs, including military, maternity, family, and civil leave; tuition assistance plans; transportation and health club subsidies; and

- (5) Any other similar benefits added thereto by endorsement.

8. For the purposes of the coverage provided, the following Definitions in the Liability And Medical Expenses Definitions Section are replaced by the following:

a. "Employee" means a person actively employed, formerly employed, on leave of absence or disabled, or retired. *Employee* includes a *leased worker*. *Employee* does not include a *temporary worker*.

b. "Suit" means a civil proceeding in which damages because of an act, error or omission to which this coverage applies are alleged. *Suit* includes:

- (1) An arbitration proceeding in which such damages are claimed and to which the insured must submit or does submit with our consent; or
- (2) Any other alternative dispute resolution proceeding in which such damages are claimed and to which the insured submits with our consent.

9. The Bis-Pak Common Policy Conditions are amended as follows:

For the purposes of the coverage provided, paragraph H3 Other Insurance is replaced by the following:

3. This Employee Benefits Liability Coverage is excess over any of the other insurance, whether primary, excess, contingent or on any other basis that is effective prior to the beginning of the policy period shown in the Declarations and that applies to an act, error or omission on other than a claims-made basis, if the other insurance has a policy period which continues after the original inception date of this coverage.

K. Voluntary Property Damage

1. With respect to the insurance provided under this coverage, the following apply:

a. Exclusion 1k(4) is replaced by the following:

(4) Personal property of others:

- (a) Held by the insured for servicing, repair, storage or sale at premises owned, occupied or rented to the insured.
- (b) Caused by the ownership, maintenance, use, loading or

unloading of any auto, watercraft, or transportation of property by any means.

- b. Exclusion 1k(5) is deleted.
- 2. The insurance provided by this coverage is subject to the following provisions:
  - a. We will pay for *property damage* at your request even if you are not legally liable, if it is otherwise subject to this coverage.
  - b. *Property damage* does not include loss of use if personal property of others is not physically injured.
  - c. **Limits**  
 The most we will pay for an *occurrence* under this coverage is \$2,500.  
 The most we will pay for the sum of all amounts paid under this coverage is an aggregate of \$2,500.  
 The Liability and Medical Expenses Limit and the Aggregate Limits do not apply to the insurance provided under this coverage.
  - d. **Settlement**  
 If you make any repairs to damaged property, at our request, we will pay the larger of your actual cost or 75% of your usual charge for the necessary labor and materials. Any property paid for or replaced by us may become our property at our option. Any payment

made under this coverage shall not be interpreted as an admission of liability by the insured or the company.

**e. Deductible**

Our obligation to pay for a covered loss applies only to the amount of loss in excess of \$100.

**f. Other Insurance**

The insurance provided by this coverage is excess over any other insurance carried by the insured which applies to a loss covered by this coverage.

**L. Increased Limits of Insurance**

- 1. The General Aggregate Limit is increased to three times the Liability and Medical Expenses Limit if your current Liability and Medical Expenses Limit is equal to \$500,000 or \$1,000,000.
- 2. The Products-Completed Operations Aggregate Limit is increased to three times the Liability and Medical Expenses Limit if your current Liability and Medical Expenses Limit is equal to \$500,000 or \$1,000,000.
- 3. The Damage To Premises Rented To You Limit is increased to \$250,000.
- 4. The Medical Expense Limit is increased to \$10,000.

The Limits of Insurance shown here do not replace and are not in addition to the Limits of Insurance shown in the Declarations.

**FUNGI OR BACTERIA EXCLUSION (LIABILITY)**

CB-0577(4-10)

This endorsement modifies insurance provided under the following:

BIS-PAK BUSINESS LIABILITY AND MEDICAL EXPENSES COVERAGE FORM

- A. The following exclusion is added to Paragraph 1 under Exclusions:

**Fungi or Bacteria**

- (1) *Bodily injury, property damage, personal injury or advertising injury* which would not have occurred, in whole or in part, but for the actual, alleged or threatened inhalation of, ingestion of, contact with, exposure to, existence of, or presence of, any *fungi* or bacteria on or within a building or structure, including its contents, regardless of whether any other cause, event, material or product contributed concurrently or in any sequence to such injury or damage.

- (2) Any loss, cost or expenses arising out of the abating, testing for, monitoring, cleaning up, removing, containing, treating, detoxifying, neutralizing, remediating or disposing of, or in any way responding to, or assessing the effects of, *fungi* or bacteria, by any insured or by any other person or entity.

This exclusion does not apply to any *fungi* or bacteria that are, are on, or are contained in, a good or product intended for bodily consumption.

- B. The following definition is added to Liability and Medical Expenses Definitions:

"*Fungi*" means any type or form of fungus, including mold or mildew and any mycotoxins, spores, scents or by-products produced or released by fungi.

**PROPERTY IN THE COURSE OF CONSTRUCTION**

CB-7201(4-10)

This endorsement modifies insurance provided under the following:

**DELUXE BIS-PAK PROPERTY COVERAGE FORM**

The provisions of the Coverage Form to which this endorsement is attached apply to the coverage provided by this endorsement except as modified below:

**1. PROPERTY COVERAGES****a. Property Covered**

Paragraph 1, Covered Property, under the Property Coverages Section is replaced by the following:

We cover the following types of property owned by you or for which you are legally liable at *covered job sites* and while in transit between your premises or a temporary storage location and a *covered job site*:

- (1) Buildings Under Construction. This means buildings and additions to buildings under construction, alteration or repair by you. This includes:
  - (a) Materials and supplies which will become a permanent part of the buildings or structures, foundations, excavations, grading, filling, attachments and permanent fixtures;
  - (b) Materials, equipment, supplies and temporary structures used for and located on or within 1,000 feet of buildings under construction, alteration or repair; and
  - (c) Scaffolding or construction forms, provided the scaffolding or construction forms are located at a building or structure under construction, alteration or repair.
- (2) Installation Projects. This means materials, supplies, machinery, fixtures and equipment on or within 1,000 feet of your installation, fabrication or erection projects that will become a permanent part of the installation, fabrication or erection projects.
- (3) Temporary Storage Locations. This means materials, equipment and supplies at temporary storage locations that will become part of Buildings Under Construction or Installation Projects. Coverage under this provision is not restricted to *covered job sites*.

**b. Limitations**

Limitation a(6) does not apply to the coverage provided by this endorsement.

**c. Additional Coverages**

The following Additional Coverages do not

apply to the coverage provided by this endorsement:

- (1) Collapse;
- (2) Water, Other Liquids, Powder or Molten Material Damage;
- (3) Business Income and Extra Expense;
- (4) Civil Authority;
- (5) Money Orders and Counterfeit Paper Currency;
- (6) Forgery and Alteration;
- (7) Increased Cost of Construction;
- (8) Business Income from Dependent Properties; and
- (9) Glass Expenses.

The following Additional Coverages are added and apply only to Property in the Course of Construction:

- (1) Contract Penalty. When a covered cause of loss occurs to a covered Building Under Construction or a covered Installation Project, we cover the cost of contractual penalties for non-completion when you are unable to complete construction or installation in accordance with contract terms or conditions. Your inability to complete construction or installation on time must be as a result of a loss by a covered cause of loss.

The most we will pay under this additional coverage is \$10,000 for all contractual penalties arising out of one occurrence.

- (2) Expediting Expenses. When a covered cause of loss occurs to a covered Building Under Construction or a covered Installation Project, we pay for reasonable expediting expenses necessary to complete construction or installation within the time frame specified in the construction contract.

Expediting expenses include additional labor and overtime, transportation costs, storage expense and the expense to rent additional equipment.

The most we will pay for all expediting expenses in one occurrence is \$10,000.

- (3) Ordinance or Law, Buildings Under Construction.

- (a) When a covered cause of loss occurs to a covered Building Under Construction, we cover:



**Enforcement of Law.** This means loss caused by the enforcement of any ordinance, law or decree that:

- (i) Requires the demolition of undamaged parts of buildings under construction that are damaged or destroyed by a covered cause of loss;
- (ii) Regulates the construction or repair of buildings under construction or establishes building, zoning or land use requirements at the site of construction; and
- (iii) Is in force at the time of loss.

**Increased Cost of Construction.** This means the increased cost to repair, rebuild or construct buildings under construction as a result of the enforcement of any building, zoning or land use ordinance, law or decree. If buildings under construction are repaired or rebuilt, they must be intended for similar occupancy as the current property unless otherwise required by a building, zoning or land use ordinance, law or decree.

**Cost to Demolish and Clear.** This means the cost to demolish and clear the site of undamaged parts of buildings under construction that are damaged or destroyed by a covered cause of loss as a result of the enforcement of the building, zoning or land use ordinance, law or decree.

- (b) We do not cover the costs associated with the enforcement of any ordinance, law or decree that requires you to or anyone else to test for, monitor, clean up, remove, contain, treat, detoxify, neutralize or in any way respond to or assess the effects of *pollutants*.
- (c) We do not cover the Increased Cost of Construction until the covered building under construction is actually repaired or replaced and unless the repairs or replacement are made as soon as reasonably possible after the loss, not to exceed two years.
- (d) If the building under construction is repaired or replaced, we pay the lesser of:
  - (i) The amount you actually spend to demolish and clear

the site, plus the amount you actually spend to repair, rebuild or construct the property but not for more than buildings of the same height, floor area and style; or

- (ii) \$50,000.

- (e) If the covered building or structure is not repaired or replaced, we pay the lesser of:

- (i) The amount you actually spend to demolish and clear the site, plus the cost to replace the damaged or destroyed property with other property of like kind and quality and used for the same purpose; or

- (ii) \$50,000.

- (4) **Testing.** We pay for loss caused by testing including start-up, performance, stress, pressure or overload testing of materials, supplies, machinery, fixtures and equipment that will become a permanent part of an Installation Project.

The most we will pay for all loss caused by testing in one occurrence is \$10,000.

- (5) **Collapse.**

- (a) With respect to buildings:

- (i) Collapse means an abrupt falling down or caving in of a building or any part of a building with the result that the building or part of the building cannot be occupied for its intended purpose;
- (ii) A building or any part of a building that is in danger of falling down or caving in is not considered to be in a state of collapse;
- (iii) A part of a building that is standing is not considered to be in a state of collapse even if it has separated from another part of the building;
- (iv) A building that is standing or any part of a building that is standing is not considered to be in a state of collapse even if it shows evidence of cracking, bulging, sagging, bending, leaning, settling, shrinkage or expansion.

- (b) We will pay for loss or damage caused by or resulting from the col-

lapse of all or any part of the insured building or structure, but only if caused by one or more of the following causes of loss:

- (i) Fire, lightning, windstorm, hail, explosion, smoke, vandalism, falling objects, vehicles, glass breakage or weight of ice or snow;
- (ii) Accidental discharge or leakage of water or steam as the direct result of the breaking or cracking of any part of a system or appliance containing water or steam;
- (iii) Water below the surface of the ground that exerts pressure on foundations or walls;
- (iv) Weight of rain that collects on a roof;
- (v) Weight of personal property or people.
- (vi) Decay that is hidden from view, unless the presence of such decay is known to an insured prior to collapse; or
- (vii) Insect or vermin damage that is hidden from view, unless the presence of such decay is known to an insured prior to collapse.

The criteria set forth in paragraphs (a)(i) through (a)(iv) do not limit the coverage otherwise provided under this Additional Coverage for the causes of loss listed in paragraphs (b)(i) through (b)(v).

(c) With respect to the following property:

- (i) Awnings;
- (ii) Gutters and downspouts;
- (iii) Yard fixtures;
- (iv) Outdoor swimming pools;
- (v) Piers, wharves and docks;
- (vi) Beach or diving platforms or appurtenances;
- (vii) Retaining walls; and
- (viii) Walks, roadways and other paved surfaces;

If the collapse is caused by a cause of loss listed in Paragraphs (b)(iv) through (b)(vii), we will pay for loss or damage to that property only if such loss or damage is a direct result of the collapse of a building insured under this policy

and the property is Covered Property under this policy.

(d) If personal property abruptly falls down or caves in and such collapse is not the result of collapse of a building, we will pay for loss or damage to Covered Property caused by such collapse of personal property only if:

- (i) The collapse was caused by a cause of loss listed in Paragraphs (b)(i) through (b)(vii) of this Additional Coverage;
- (ii) The personal property which collapses is inside a building; and
- (iii) The property which collapses is not of a kind listed in Paragraph (c) above, regardless of whether that kind of property is considered to be personal property or real property.

The coverage stated in this Paragraph (d) does not apply to personal property if marring and/or scratching is the only damage to that personal property caused by the collapse.

Collapse of personal property does not mean cracking, bulging, sagging, bending, leaning, settling, shrinkage or expansion.

This additional coverage does not increase the coverage amount. The deductible amount shown in the Schedule applies to this additional coverage.

d. The following is added:

#### **Soft Costs and Rental Income**

The following coverages are added:

(1) **Soft Costs.** We pay for soft cost expenses that arise out of a *delay* caused by a covered cause of loss. Soft cost expenses means the necessary expenses relating to the construction, erection or fabrication of Buildings Under Construction or Installation Projects that are over and above those costs which would have been incurred had there been no *delay*. These costs consist of:

- (a) Advertising. Additional advertising and promotional expenses.
- (b) Expediting Expenses. Expediting expenses such as overtime and additional transportation or storage costs;
- (c) Fees. Additional fees for architects,

engineers, consultants, attorneys and accountants;

- (d) Interest. Additional interest on money borrowed to finance construction, remodeling, renovation or repair;
  - (e) Leases. The cost of administrative expenses and commissions which result from the renegotiation of leases; or
  - (f) Realty Taxes. Additional realty taxes and other assessments which you incur for the period of time that construction has been extended beyond the projected completion date.
- (2) Rental Income. We pay for actual loss of rental income that arises out of a *delay* caused by a covered cause of loss. Expenses that do not necessarily continue because of a *delay* will be deducted from the loss of rental income.

The most we will pay for the total of all soft costs and rental income arising out of one occurrence is 5% of the limit of insurance shown in the Schedule.

The following exclusions are added which apply only to Soft Costs and Rental Income Coverage:

- (1) Additional Time. We do not pay for any increase in loss resulting from additional time that would be required to replace or repair any part of the covered property due to:
  - (a) Ordinances or laws requiring the use of construction materials or equipment that are different from the property that is destroyed;
  - (b) Ordinances or laws requiring you to test, evaluate, observe or record the existence, level or effects of *pollutants*;
  - (c) Adverse weather conditions; or
  - (d) Improvements necessary to correct deficiencies of original construction, erection or fabrication.
- (2) Consequential Loss. We do not pay for any increase in loss resulting from any consequential loss.
- (3) Lease, Contract or License. We do not pay for any increase in loss resulting from the suspension, lapse or cancellation of any lease, contract or license.
- (4) Strikes, Protests and Other Interference. We do not pay for any increase in loss resulting from interference by strikers or anyone else interfering with

the rebuilding, repairing or replacing the Buildings Under Construction or Installation Projects.

The following additional coverages are added which apply only to Soft Costs and Rental Income Coverage:

- (1) Expense to Reduce Loss. We extend your coverage to include necessary expenses incurred to reduce the amount of soft cost expenses or loss of rental income. Expenses paid under this additional coverage will not increase the applicable limit. We do not pay for:
  - (a) Expenses to extinguish a fire; or
  - (b) Expenses that exceed the amount by which a loss is reduced.
- (2) Interruption by Civil Authority. We extend coverage for soft cost expenses to include loss while access to Buildings Under Construction or Installation Projects is specifically denied by an order of civil authority. This order must be a result of damage to property other than at the Buildings Under Construction or Installation Projects and caused by a covered cause of loss. This extension is limited to two consecutive weeks from the date of order. This does not increase the limit.

## 2. PROPERTY EXTENSIONS OF COVERAGE

The Property Extensions of Coverage do not apply to the coverage provided by this endorsement.

## 3. PROPERTY EXCLUSIONS

- a. Exclusions 2a, Electrical Apparatus; 2c, Smoke, Vapor, Gas; 2e, Frozen Plumbing; 2l(3), Smog; 2l(4), Settling, Cracking, Shrinking or Expansion; 2l(6), Mechanical Breakdown, including rupture or bursting caused by centrifugal force; and 3a, Weather do not apply to Property in the Course of Construction.
- b. Property Exclusion 1g, Water, is replaced by the following with respect to Property in the Course of Construction:

### Water

- (1) Flood, surface water, waves, tides, tidal waves, overflow of any body of water or their spray, all whether driven by wind or not;
- (2) Mudslide or mudflow;
- (3) Water that backs up or overflows from a sewer, drain or sump; or
- (4) Water below the surface of the ground. This includes water that exerts pressure on or flows, seeps or leaks into a build-

ing, floor, sidewalk, driveway or other structure, or through a door, window or other opening. This does not apply to water below the surface of the ground that exerts pressure on foundations or walls causing them to collapse as provided under Additional Coverage (5), Collapse.

c. The following exclusions are added which apply only to Property in the Course of Construction:

- (1) Explosion, Rupture or Bursting. We do not pay for loss caused by explosion, rupture or bursting of steam boilers, steam or gas turbines, steam pipes or steam engines. This exclusion applies only to loss or damage to the steam boilers, steam or gas turbines, steam pipes or steam engine in which the loss occurred.
- (2) We do not pay for loss or damage if one or more of the following exclusions apply to the loss. But, if loss by a covered peril results, we do pay for the resulting loss.
  - (a) Errors in Materials and Workmanship. We do not pay for loss caused by an act, defect, error or omission (negligent or not) relating to:
    - (i) Design, specifications, construction or workmanship;
    - (ii) Planning, zoning, development, siting, surveying, grading or compaction; or
    - (iii) Maintenance, installation, renovating, remodeling or repair.
  - (b) Electrical Currents. We do not pay for loss caused by arcing or by electrical currents other than lightning.
  - (c) Breakdown. We do not pay for loss caused by any:
    - (i) Structural, mechanical or remodeling process; or
    - (ii) Structural, mechanical or electrical breakdown or malfunction.
  - (d) Settlement, Cracks and Shrinkage. We do not pay for loss caused by settling, cracking, shrinking, bulging or expanding of pavements, foundations, walls, ceiling, glass or roofs.

#### 4. PROPERTY LIMITS OF INSURANCE

The Property Limits of Insurance Section is replaced by the following with respect to the

coverage provided by this endorsement:

- a. The most we will pay for loss or damage to Property in the Course of Construction in any one occurrence is the Limit of Insurance shown in the Schedule.
- b. The limit applicable to the Fire Department Service Charge Additional Coverage is in addition to the Limit of Insurance.

#### 5. PROPERTY OPTIONAL COVERAGES

The Property Optional Coverages do not apply to Property in the Course of Construction.

#### 6. PROPERTY DEDUCTIBLES

Property Deductibles is replaced by the following only with respect to Property in the Course of Construction:

We will not pay for loss or damage in any one occurrence until the amount of loss or damage exceeds the deductible amount shown in the Schedule. We will then pay the amount of loss or damage in excess of the deductible.

In the event that loss or damage occurs to Covered Property at more than one *covered job site*, the deductible will be applied only once.

#### 7. PROPERTY GENERAL CONDITIONS

- a. The following are added:

##### (1) When Coverage Ceases.

Coverage will cease under this endorsement according to the following:

Coverage for Property in the Course of Construction will end when one of the following first occurs:

- (a) The *covered property* is accepted by the purchaser;
- (b) The *covered property* is occupied for its intended use;
- (c) The *covered property* has been completed for more than 90 days;
- (d) This policy expires or is cancelled;
- (e) Your interest in the *covered property* ceases; or
- (f) You abandon construction with no intent to complete the work.

##### (2) Premium Audit

- (a) The premium shown for this endorsement in the Declarations is a deposit premium only and is based on the Premium Basis Estimate and the Rate shown in the Schedule. When this coverage expires or is cancelled, we will compute the earned premium based on the actual exposure for the premium basis. The larger of the premium



computed above and the minimum premium shown in the Schedule is the final earned premium for this endorsement. If a premium payment is due, we will send notice to the First Named Insured. The due date for audit and retrospective premiums is the date shown as the due date on the bill. If the deposit premium paid for the policy period is greater than the earned premium, we will return the excess to the First Named Insured.

- (b) You must keep records of the information we need for premium computation and send us copies at such times as we may request.

- b. Paragraph b of Property General Condition 2 Mortgageholders is replaced by the following:

We will pay for covered loss of or damage to buildings or structures to each mortgageholder shown in the Schedule in their order of precedence, as interests may appear.

## 8. PROPERTY LOSS CONDITIONS

- a. Property Loss Condition 2, Appraisal, is replaced by the following, but only with respect to the Soft Costs and Rental Income Coverage provided under this endorsement:

### **Appraisal - Soft Costs and Rental Income**

If you and we do not agree on the amount of the soft cost expenses or loss of rental income, both you and we may agree to have these amounts be determined by appraisal.

In this event, each will select a competent, independent appraiser and notify the other of the appraisers identity within 20 days of agreeing to the appraisal. The two appraisers will select a competent, impartial umpire. If the two appraisers are unable to agree upon an umpire within 15 days, you or we can ask a judge of a court of record in the state where the property is located to select an umpire.

The appraisers will determine and state separately the incurred soft cost expenses and loss of rental income. If the appraisers submit a written report of any agreement to us, the amount agreed upon will be the amount of the loss. If the appraisers fail to agree within a reasonable time, they will submit only their differences to the umpire. Written agreement so itemized and signed by any two of these three sets the amount of loss.

Each appraiser will be paid by the party selecting that appraiser. Other expenses of

the appraisal and the compensation of the umpire will be paid equally by you and us.

- b. The following are added to Property Loss Condition 3, Duties in the Event of Loss or Damage, and apply only to the Soft Costs and Rental Income Coverage provided under this endorsement:

- (1) Due Diligence. We pay only for soft cost expenses or loss of rental income during the period of time that would be required with due diligence and dispatch to rebuild or restore the damage covered property with materials of like kind and quality. You must do everything reasonably possible to minimize soft cost expenses and loss of rental income.

- (2) Interference and Access. You must minimize any interference with the construction schedule to avoid or reduce any resulting delay.

You must also allow us access to the covered property so that we can negotiate with the contractors, manufacturers, suppliers or other involved parties so we can:

- (a) Establish the cause and extent of the loss to covered property, soft cost expenses and loss of rental income; and
- (b) Determine and suggest methods to minimize or avoid the delay in construction, repairing, remodeling or renovation.

- c. The following is added to Property Loss Condition 5, Loss Payment and Valuation:

- (1) The value of Buildings Under Construction will be based on the replacement cost without any deduction for depreciation.

The replacement cost is limited to the cost of repair or replacement with similar materials on the same site and used for the same purpose. The payment shall not exceed the amount you spend to repair or replace the damaged or destroyed property.

- (2) The value of Installation Projects will be based on the lesser of the following amounts:

- (a) The actual cost to repair, replace or rebuild the covered property with materials of like kind and quality. The actual cost may include material, labor and reasonable overhead expenses; or

- (b) The amount you actually spend to repair, replace or rebuild the covered property.

- (3) Expenses and Income. We pay only soft cost expenses and loss of rental income incurred within 12 consecutive months after the loss to Buildings Under Construction or Installation Projects.

#### 9. PROPERTY DEFINITIONS

The following definitions are added:

- a. "Covered job site" means any location, job site or project where you are in the process of construction or installation.
- b. "Delay" means a delay in the construction, erection or fabrication of Buildings Under Construction or Installation Projects.

#### SCHEDULE

Limit of Insurance: \$100,000

Deductible: \$250

Premium Basis	Estimate	Rate
Payroll Plus 50% of the Cost of Subcontracted Work	\$1,900,000	\$1.990 Per \$1,000

Minimum Premium = \$50

#### ADDITIONAL INSURED - OWNERS, LESSEES OR CONTRACTORS - AUTOMATIC STATUS WHEN REQUIRED IN CONSTRUCTION AGREEMENT WITH YOU - PRIMARY

CB-7191(5-13)

This endorsement modifies insurance provided under the following:

BIS-PAK BUSINESS LIABILITY AND MEDICAL EXPENSES COVERAGE FORM

1. Who Is An Insured is amended to include as an additional insured:
  - a. Any person or organization for whom you are performing operations when you and such person or organization have agreed in writing in a contract or agreement that such person or organization be added as additional insured on your policy; and
  - b. Any other person or organization you are required to add as an additional insured under the contract or agreement described in paragraph a above.

Such person or organization is an insured only with respect to liability for *bodily injury, property damage* or *personal and advertising injury* caused, in whole or in part, by:

- a. Your acts or omissions; or
- b. The acts or omissions of those acting on your behalf;

in the performance of your ongoing operations for the additional insured.

A person's or organization's status as an insured under this endorsement ends when your operations for that insured are completed.

2. With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to:

- a. *Bodily injury, property damage, personal and advertising injury* arising out of the rendering of, or the failure to render, any professional, architectural, engineering or surveying services, including:
  - (1) The preparing, approving or failing to prepare or approve maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; and
  - (2) Supervisory, inspection, architectural or engineering activities.
- b. *Bodily injury or property damage* occurring after:
  - (1) All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or
  - (2) That portion of *your work* out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.
3. The insurance provided by this endorsement is primary and noncontributory.



**CONTRACTOR'S EQUIPMENT****CB-7105(6-13)**

This endorsement modifies insurance provided under the following:

**DELUXE BIS-PAK PROPERTY COVERAGE FORM**

The following provisions apply to the coverage provided by this endorsement:

**1. COVERAGE**

- a. The first paragraph under the Property Coverages Section is replaced by the following:

We will pay for direct physical loss of or damage to Covered Property within the coverage territory caused by or resulting from any Covered Cause of Loss.

**b. Covered Property**

Paragraph 1, Covered Property, under the Property Coverages Section is replaced by the following:

In this endorsement, covered property refers to one or more classes of property as described below:

- (1) **Scheduled Contractor's Equipment** - We cover only those described items for which a coverage amount is shown in the Schedule. It is a condition that at the time this coverage is effective, all described items are in sound condition.
- (2) **Unscheduled Contractor's Equipment** - We cover tools and other contractor's equipment owned by you and used in your business. We cover only tools and equipment which are in sound condition at the time this coverage is effective.
- (3) **Rented Tools and Equipment**  
We cover contractor's tools and equipment rented from others that are in your care, custody or control and used in your business.
- (4) **Employees' Tools**  
We cover employees' tools which are used in connection with your business.

**c. Extensions of Coverage**

- (1) We also cover contractor's equipment acquired during the policy period for up to 30 days after each item is acquired. This extension applies only to items of contractor's equipment which have a value of more than \$2000. You must provide us with a complete description of each item within this 30 day period and pay the additional premium.  
  
We cover these items for their actual cash value. The most that we will pay for all such items will be twenty-five percent of the total coverage amount for all described items.

Coverage for each item acquired will end at the earliest of the following:

- (a) When the newly acquired item is reported to us;
  - (b) The end of the 30-day reporting period; or
  - (c) The expiration date of this policy.
- (2) We also cover contractor's equipment which you borrow from others while such equipment is in your care, custody and control and being used in your business. We cover these items for their actual cash value. The most we will pay in one occurrence for loss or damage to borrowed contractors' equipment is twenty-five percent of the total coverage amount for all covered property under this endorsement.

**d. Property Not Covered**

Paragraph 2, Property Not Covered, under the Property Coverages Section is replaced by the following:

We do not cover:

- (1) Property that is not in sound condition when this coverage is effective;
- (2) Property that you rent or lease to others;
- (3) Property that is waterborne. We do cover property that is in transit on a regular ferry, lighter or carfloat;
- (4) Property that is underground, in caissons or underwater;
- (5) Property that is or will be a permanent part of a building or structure;
- (6) Plans, blueprints, designs or specifications;
- (7) Self-propelled vehicles that are designed for highway use;
- (8) Aircraft;
- (9) Watercraft;
- (10) Tires and tubes mounted on vehicles. We do cover tires and tubes mounted on covered vehicles, if the loss is caused by:
  - (a) Fire, windstorm, theft or vandalism;
  - (b) A Covered Cause of Loss which also damages the vehicle.

**e. Covered Causes of Loss**

Paragraph 3, Covered Causes of Loss, under the Property Coverages Section is replaced by the following:

- (1) Except for booms that exceed 25 feet

in length, we cover direct physical loss to covered property unless the loss is excluded. The loss must be due to an external cause.

- (2) For booms that exceed 25 feet in length, we cover direct physical loss to this property caused only by fire; lightning; windstorm; hail; earthquake; flood; smoke; explosion; aircraft, spacecraft, self-propelled missiles and objects that fall from these items; vehicles, including an accident to a transporting vehicle; strike; riot; civil commotion; vandalism; theft; attempted theft; sprinkler leakage; collapse of buildings and the upset or overturn of the unit of which the boom is a part, or the collision of the unit with another object.

## 2. EXCLUSIONS

The Property Exclusions Section is replaced by the following:

We do not pay for a loss if one or more of the following excluded causes of loss apply to the loss, regardless of other causes or events that contribute to or aggravate the loss, whether such causes or events act to produce the loss before, at the same time as, or after the excluded cause of loss. We do not pay for a loss that results from:

- a. A dishonest or illegal act, alone or in collusion with another, by:
  - (1) You;
  - (2) Others who have an interest in the property;
  - (3) Others to whom you entrust the property; or
  - (4) The employees or agents of (1), (2) or (3), whether or not they are at work.

We do cover loss caused by dishonest acts by carriers or other bailees for hire.

- b. Mysterious disappearance;
- c. Any cause when the only proof that a loss occurred is an inventory shortage;
- d. Dampness of atmosphere;
- e. Extremes of temperature;
- f. Corrosion or rust;
- g. Pitting;
- h. Mechanical breakdown or failure. If a fire or explosion results, we do cover the loss caused by the fire or explosion;
- i. Electrical currents, other than those caused by lightning, that damage an electrical apparatus or its wiring. If a fire or explosion results, we do cover the loss caused by the fire or explosion;

- j. A process to repair, adjust, service or maintain the covered property. If a fire or explosion results, we do cover the loss caused by the fire or explosion;
- k. The weight of a load when it exceeds the designed capacity of a machine to lift or support the load from any position;
- l. Wear and tear to covered property;
- m. Gradual deterioration of covered property;
- n. A fault or weakness that is intrinsic to the property which causes it to break, spoil, become defective or destroy itself;
- o. Damage caused by nesting or infestation, or discharge or release of waste products or secretions, by insects, birds, rodents or other animals to covered property;
- p. Obsolescence or depreciation of covered property;
- q. War. This means:
  - (1) Declared war, undeclared war, civil war, insurrection, rebellion or revolution;
  - (2) A warlike act by a military force or by military personnel;
  - (3) The destruction, seizure or use of the property for a military purpose; or
  - (4) The discharge of a nuclear weapon even if it is accidental.
- r. Civil authority. This means:
  - (1) Seizure or destruction under quarantine or customs regulations;
  - (2) Confiscation or destruction by order of a government or public authority; or
  - (3) Risks of contraband or illegal transportation or trade.
- s. Nuclear hazard. This means nuclear reaction, nuclear radiation or radioactive contamination:
  - (1) Whether controlled or uncontrolled; or
  - (2) Caused by, contributed to or aggravated by a cause of loss covered by this policy. A loss caused by nuclear hazard will not be considered to be a loss caused by fire, explosion or smoke. If fire is covered by this policy, we do cover the loss caused by a fire that results from the nuclear hazard.

We do not pay for such excluded loss even if the following contribute to, aggravate or cause the loss:

- a. The act or decision of a person, group, organization or governmental body. This includes the failure to act or decide.
- b. A fault, defect or error, negligent or not, in:
  - (1) Planning, zoning, surveying, siting,

grading, compacting, land use or development of property.

- (2) The design, blueprint, specification, workmanship, construction, renovation, remodeling or repair of property. This includes the materials needed to construct, remodel or repair the property.

- (3) Maintenance of property.

These apply whether or not the property is covered by this policy.

- c. A condition of the weather.
- d. The collapse of a building or structure.

### 3. DEDUCTIBLE

The Property Deductibles Section is replaced by the following:

The deductible amounts shown in the Schedule will apply separately to each class of covered property for loss or damage in any one occurrence after all other adjustments have been made. When the occurrence involves loss or damage to multiple items within Scheduled Contractor's Equipment, then the highest deductible amount applicable to the lost or damaged items will be deducted from the total amount of loss or damage to those items. We will then pay the amount of loss or damage in excess of the applicable deductible up to the coverage amount shown in the schedule.

### 4. LIMITS OF INSURANCE

The Property Limits of Insurance Section is replaced by the following:

#### a. Scheduled Contractor's Equipment

The most we will pay for loss to any one item of Scheduled Contractor's Equipment is the coverage amount shown in the Schedule for that item.

#### b. Unscheduled Contractor's Equipment

Subject to a maximum of \$2,500 per item, the most we will pay for all loss or damage in one occurrence is the coverage amount for Unscheduled Contractor's Equipment shown in the Schedule.

#### c. Rented Tools and Equipment

The most we will pay for all loss or damage in one occurrence is the Rented Tools and Equipment coverage amount shown in the Schedule.

#### d. Employees' Tools

The most we will pay for all loss or damage in one occurrence is the Employees' Tools coverage amount as described in the Schedule.

### 5. CONDITIONS

#### a. The Coverage Territory Property General

Condition is replaced by the following:

Coverage applies only while the property is in the United States, Canada or Puerto Rico. This includes property that is in transit except to or from Alaska, Hawaii or Puerto Rico.

#### b. The following condition is added:

##### Coinsurance

- (1) You must maintain a minimum coverage amount for each described item of Scheduled Contractor's Equipment. This minimum coverage amount is the full value of the described item. If the coverage amount at the time of loss is less than the minimum coverage amount, we will pay only a part of a loss. Our part of the loss will be determined by dividing the coverage amount by the minimum coverage amount. This percentage will be applied to the final adjusted loss to determine the amount that we will pay.

- (2) You must maintain a minimum coverage amount for Unscheduled Contractor's Equipment. This minimum coverage amount is the full value of all covered unscheduled equipment. If the coverage amount at the time of loss is less than the minimum coverage amount, we will pay only a part of a loss. Our part of the loss will be determined by dividing the coverage amount by the minimum coverage amount. This percentage will be applied to the final adjusted loss to determine the amount that we will pay.

#### (3) Rented Tools and Equipment

You must maintain a minimum coverage amount for Rented Tools and Equipment. This minimum coverage amount is the full value of all covered Rented Tools and Equipment. If the coverage amount at the time of loss is less than the minimum coverage amount, we will pay only a part of a loss. Our part of the loss will be determined by dividing the coverage amount by the minimum coverage amount. This percentage will be applied to the final adjusted loss to determine the amount that we will pay.

### 6. VALUATION

The following is added to the Loss Payment and Valuation provision under Property Loss Conditions:

We will determine the value of Covered Property using the Basis for Valuation shown in the Schedule.

**7. SCHEDULE**

The following items do not apply to the coverage provided by this endorsement:

- a. The Additional Coverages under the Prop-

erty Coverages Section; and

- b. The Property Extensions of Coverage Section.

**SCHEDULE****Scheduled Contractor's Equipment**

Deductible Amount		Items to Which the Deductible Applies	
\$	500	SCAFFOLDING	
	500	PETTIBONE	
Described Item		Manufacturer / Serial Number	Basis for Valuation
SCAFFOLDING			Actual Cash Value
PETTIBONE			Actual Cash Value
			Coverage Amount
			\$ 10,000
			20,000

**Unscheduled Contractor's Equipment**

Deductible:	\$500
Coverage Amount:	\$30,000 with a \$2,500 maximum for any one item
Basis for Valuation:	Actual Cash Value

**ADDITIONAL INSURED - COMPLETED OPERATIONS - PRIMARY AUTO-MATIC STATUS WHEN REQUIRED IN CONSTRUCTION AGREEMENT WITH YOU (OWNERS, LESSEES OR CONTRACTORS)**

CB-7242(5-13)

This endorsement modifies insurance provided under the following:

BIS-PAK BUSINESS LIABILITY AND MEDICAL EXPENSES COVERAGE FORM

1. Who Is An Insured is amended to include as an additional insured:
  - a. Any person(s) or organization(s) for whom you have performed operations if you and such person(s) or organization(s) have agreed in writing in a contract or agreement that such person(s) or organization(s) be added as an additional insured on your policy for completed operations; and
  - b. Any other person or organization you are required to add as an additional insured under the contract or agreement described in paragraph a above.

Such person(s) or organization(s) is an additional insured only with respect to liability included in the *products-completed operations hazard* for *bodily injury or property damage* caused, in whole or in part, by *your work* performed for that additional insured at the location designated and described in the contract or agreement.

2. The insurance does not apply to:

- a. *Bodily injury or property damage* which occurs prior to execution of the contract or agreement described in item 1; or
- b. *Bodily injury or property damage* that occurs after the time period during which the contract or agreement described in item 1 requires you to add such person or organization onto your policy as an additional insured for completed operations; or
- c. *Bodily injury or property damage* arising out of the rendering of, or the failure to render, any professional, architectural, engineering or surveying services, including:
  - (1) The preparing, approving or failing to prepare or approve maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; and
  - (2) Supervisory, inspection, architectural or engineering activities.

3. The insurance provided by this endorsement is primary and noncontributory.



**ACUITY ADVANTAGES - PROPERTY COVERAGES**

CB-7262(8-15)

This endorsement modifies insurance provided under the following:

**DELUXE BIS-PAK PROPERTY COVERAGE FORM**

**A. The Fire Department Service Charge Additional Coverage is replaced by the following:**

When the fire department is called to save or protect Covered Property from a Covered Cause of Loss, we will pay up to \$5,000 for your liability for fire department service charges:

- (1) Assumed by contract or agreement prior to loss; or
- (2) Required by local ordinance.

**B. Paragraph (3) of Fire Extinguisher Systems Recharge Expense Additional Coverage is replaced by the following:**

- (3) (a) We will pay the actual cost of recharging or replacing your fire extinguishers.
- (b) The most we will pay under this Additional Coverage to recharge or replace your fire extinguishing systems and for the loss or damage to Covered Property is \$10,000 in any one occurrence.

**C. The following Additional Coverages are added:**

**1. Additional Reward**

We will pay up to \$5,000 to any individual or organization for information leading to a crime conviction, other than for arson, in connection with loss or damage to covered property caused by or resulting from a Covered Cause of Loss. This amount is the most we will pay, regardless of the number of persons or organizations involved in providing information.

No deductible applies to this Additional Coverage.

**2. Arson Reward**

We will pay up to \$5,000 to any individual or organization for information leading to an arson conviction in connection with loss or damage to covered property. This amount is the most we will pay, regardless of the number of persons or organizations involved in providing information.

No deductible applies to this Additional Coverage.

**3. Lock Replacement**

We will cover your costs to repair or replace door locks or tumblers of your described premises because of theft or loss of your door keys. The most we will pay under this additional coverage is \$500 in any one occurrence.

No deductible applies to this Additional Coverage.

**4. Ordinance or Law Coverage**

**a. Application of Coverage**

The coverage provided applies only if both (1) and (2) are satisfied.

**(1) The ordinance or law:**

- (a) Regulates the demolition, construction or repair of buildings, or establishes zoning or land use requirements at the described premises; and
- (b) Is in force at the time of loss.

But coverage applies only in response to the minimum requirements of the ordinance or law. Losses and costs incurred in complying with recommended actions or standards that exceed actual requirements are not covered.

**(2) The building sustains direct physical damage:**

- (a) That is covered under this policy and such damage results in enforcement of the ordinance or law; or
- (b) That is covered under this policy and direct physical damage that is not covered under this policy, and the building damage in its entirety results in enforcement of the ordinance or law.
- (c) But if the damage is not covered under this policy, and such damage is the subject of the ordinance or law, then there is no coverage even if the building has also sustained covered direct physical damage.

**b. We will not pay under Coverage A, Coverage B or Coverage C for:**

- (1) Enforcement of any ordinance or law which requires the demolition, repair, replacement, reconstruction, remodeling or remediation of property due to contamination by *pollutants* or due to the presence, growth, or proliferation, spread of any activity of *fungi*, wet or dry rot or bacteria; or
- (2) The costs associated with the enforcement of any ordinance or law which requires any insured or others to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize or in any way respond to or assess the effects of *pollutants*,

*fungi*, wet or dry rot or bacteria.

c. Coverage

(1) Coverage A - Coverage for Loss to the Undamaged Portion of the Building

With respect to the building that has sustained covered direct physical damage, we will pay under Coverage A for the loss in value of the undamaged portion of the building as a consequence of enforcement of an ordinance or law that requires demolition of undamaged parts of the same building.

(2) Coverage B - Demolition Cost Coverage

With respect to the building that has sustained covered direct physical damage, we will pay the cost to demolish and clear the site of undamaged parts of the same building as a consequence of enforcement of an ordinance or law that requires demolition of such undamaged property.

(3) Coverage C - Increased Cost of Construction Coverage

With respect to the building that has sustained covered direct physical damage, we will pay the increased cost to:

- (a) Repair or reconstruct damaged portions of that building; and/or
- (b) Reconstruct or remodel undamaged portions of the building whether or not demolition is required;

When the increased cost is a consequence of enforcement of the minimum requirement of the ordinance or law.

However:

- (a) This coverage applies only if the restored or remodeled property is intended for similar occupancy as the current property, unless such occupancy is not permitted by zoning or land use ordinance or law.
- (b) We will not pay for the increased cost of construction if the building is not repaired, reconstructed or remodeled.

d. Loss Payment

The most we will pay, for the total of all

covered loss for Coverage A, Coverage B and Coverage C combined is \$10,000. Subject to the \$10,000 Combined Limit of Insurance, the following loss payment provisions apply:

- (1) When there is a loss in value of an undamaged portion of a building to which Coverage A applies, the loss payment for that building, including damaged and undamaged portions, will be determined as follows:

- (a) If the property is repaired or replaced, on the same or another premises we will not pay more than the amount you actually spend to repair, rebuild or reconstruct the building but not for more than the amount it would cost to restore the building on the same premises and of the same heights, floor area, style and comparable quality of the original property insured; or

- (b) If the property is not repaired or replaced, we will not pay more than the actual cash value of the building at the time of loss.

- (2) Under Coverage B, we will not pay more than the amount you actually spend to demolish and clear the site of the described premises.

- (3) With respect to Coverage C:

- (a) We will not pay under Coverage C:

- (i) Until the property is actually repaired or replaced, at the same or another premises; and

- (ii) Unless the repairs or replacement are made as soon as reasonably possible after the loss or damage, not to exceed two years. We may extend this period in writing during the two years.

- (b) If the building is repaired or replaced at the same premises, or if you elect to rebuild at another premises, the most we will pay under Coverage C is the increased cost of construction at the same premises.

- (c) If the ordinance or law requires relocation to another



premises, the most we will pay for under Coverage C is the increased cost of construction at the new premises.

- e. Under this coverage, we will not pay for loss due to any ordinance or law that:
    - (1) You were required to comply with before the loss, even if the building was undamaged; and
    - (2) You failed to comply with.
  - f. No deductible applies to this Additional Coverage.
  - g. Item g of Property Loss Condition 5, Loss Payment and Valuation, does not apply to this coverage.
  - h. This coverage is excess over any coverage available to you under the Ordinance or Law Coverage endorsement, if applicable.
- D.** The last paragraph of Item b, Business Personal Property, of the Newly Acquired or Constructed Extension of Coverage is replaced by the following:
- The most we will pay for loss or damage under this extension is \$250,000 at each building.
- E.** The most we will pay for loss or damage under the Property Off-Premises Extension of Coverage is \$15,000.
- F.** The last paragraph of the Property in Transit Extension of Coverage is replaced by the following:
- The most we will pay for loss or damage under this extension is \$15,000.
- G.** Item b of the Accounts Receivable Extension of Coverage is replaced by the following:
- b. The most we will pay under this Coverage Extension for loss or damage in any one occurrence at the described premises is \$25,000, unless a higher Limit of Insurance for Accounts Receivable is shown in the Declarations.
- For accounts receivable not at the described premises, the most we will pay is \$5,000.
- H.** The following Extensions of Coverage are added:
- 1. Off-Premises Electronic Data Storage**
- You may extend the insurance that applies to Business Personal Property to apply to

direct physical loss or damage to duplicate and back-up *electronic data* which are stored at a premises where you do not conduct *operations* with the *electronic data* and which is not covered under any other coverage form. The most we pay for loss to *electronic data* at any one storage location is \$25,000.

**2. Power Failure and Changes in Temperature or Humidity**

You may extend the insurance that applies to your Business Personal Property to pay for loss or damage to that property that results from an interruption of power or a change in temperature or humidity caused by physical damage to equipment used for refrigerating, air conditioning, cooling, dehumidifying, heating, generating or converting power (including connections, supply or transmission lines and pipes), at the described premises. This extension applies only if loss or damage is caused by a Covered Cause of Loss.

The most we will pay for loss or damage under this extension is \$5,000.

- I.** The Outdoor Signs Optional Coverage applies to your policy.
- The most we will pay for loss or damage in any one occurrence is \$10,000 for Outdoor Signs.
- J.** The Outdoor Property Extension of Coverage is replaced by the following:
    - a. You may extend the insurance provided by this Coverage Form to apply to your outdoor fences, radio and television antennas (including satellite dishes), trees, shrubs and plants (other than stock of trees, shrubs or plants), including debris removal expense. Loss or damage must be caused by or result from any of the following causes of loss:
      - (1) Fire;
      - (2) Lightning;
      - (3) Explosion;
      - (4) Riot or Civil Commotion; or
      - (5) Aircraft.
    - b. The most we will pay for loss or damage under this Extension is \$10,000, but not more than \$1,000 for any one tree, shrub or plant.

**CONDITIONAL EXCLUSION OF TERRORISM (RELATING TO DISPOSITION OF FEDERAL TERRORISM RISK INSURANCE ACT)**

CB-0564(1-15)

This endorsement modifies insurance provided under the following:

**BIS-PAK COVERAGE PART**

A. The Bis-Pak Property Coverage Form and the Bis-Pak Business Liability and Medical Expenses Coverage Form are amended as follows:

**1. Applicability Of The Provisions Of This Endorsement**

a. The provisions of this endorsement will become applicable commencing on the date when any one or more of the following first occurs. But if your policy (meaning the policy period in which this endorsement applies) begins after such date, then the provisions of this endorsement become applicable on the date your policy begins.

(1) The federal Terrorism Risk Insurance Program ("Program"), established by the Terrorism Risk Insurance Act, has terminated with respect to the type of insurance provided under this Coverage Form; or

(2) A renewal, extension or replacement of the Program has become effective without a requirement to make terrorism coverage available to you and with revisions that:

(a) Increase our statutory percentage deductible under the Program for terrorism losses. (That deductible determines the amount of all certified terrorism losses we must pay in a calendar year, before the federal government shares in subsequent payment of certified terrorism losses.); or

(b) Decrease the federal government's statutory percentage share in potential terrorism losses above such deductible; or

(c) Redefine terrorism or make insurance coverage for terrorism subject to provisions or requirements that differ from those that apply to other types of events or occurrences under this policy.

b. If the provisions of this endorsement become applicable, such provisions:

(1) Supersede any terrorism endorsement already endorsed to this policy that addresses *certified acts of terrorism* and/or *other acts of terrorism*, but only with respect to loss or injury or damage from an incident(s) of terrorism (however defined) that occurs on or after the date when the provisions of this endorsement become applicable; and

(2) Remain applicable unless we notify you of changes in these provisions, in response to federal law.

c. If the provisions of this endorsement do NOT become applicable, any terrorism endorsement already endorsed to this policy, that addresses *certified acts of terrorism* and/or *other acts of terrorism*, will continue in effect unless we notify you of changes to that endorsement in response to federal law.

2. The following definition is added and applies under this endorsement wherever the term terrorism is shown in italics.

"Terrorism" means activities against persons, organizations or property of any nature:

a. That involve the following or preparation for the following:

(1) Use or threat of force or violence; or

(2) Commission or threat of a dangerous act; or

(3) Commission or threat of an act that interferes with or disrupts an electronic, communication, information, or mechanical system; and

b. When one or both of the following applies:

(1) The effect is to intimidate or coerce a government or the civilian population or any segment thereof, or to disrupt any segment of the economy; or

(2) It appears that the intent is to intimidate or coerce a government, or to further political, ideological, religious, social or economic objectives or to express (or express opposition to) a philosophy or ideology.

**B. The Property Coverage Form is amended as follows:**

**1. The following exclusion is added:**

**EXCLUSION OF TERRORISM**

We will not pay for loss or damage caused directly or indirectly by *terrorism*, including action in hindering or defending against an actual or expected incident of *terrorism*. Such loss or damage is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the loss. But this exclusion applies only when one or more of the following are attributed to an incident of *terrorism*:

- a. The *terrorism* is carried out by means of the dispersal or application of radioactive material, or through the use of a nuclear weapon or device that involves or produces a nuclear reaction, nuclear radiation or radioactive contamination; or
- b. Radioactive material is released, and it appears that one purpose of the *terrorism* was to release such material; or
- c. The *terrorism* is carried out by means of the dispersal or application of pathogenic or poisonous biological or chemical materials; or
- d. Pathogenic or poisonous biological or chemical materials are released, and it appears that one purpose of the *terrorism* was to release such materials; or
- e. The total of insured damage to all types of property in the United States, its territories and possessions, Puerto Rico and Canada exceeds \$25,000,000. In determining whether the \$25,000,000 threshold is exceeded, we will include all insured damage sustained by property of all persons and entities affected by the *terrorism* and business interruption losses sustained by owners or occupants of the damaged property. For the purpose of this provision, insured damage means damage that is covered by any insurance plus damage that would be covered by any insurance but for the application of any terrorism exclusions. Multiple incidents of *terrorism* which occur within a 72-hour period and appear to be carried out in concert or to have a related purpose or common leadership will be deemed to be one incident, for the purpose of determining whether the threshold is exceeded.

With respect to this Item 1e, the immediately preceding paragraph describes the threshold used to measure the

magnitude of an incident of *terrorism* and the circumstances in which the threshold will apply, for the purpose of determining whether this Exclusion will apply to that incident. When the Exclusion applies to an incident of *terrorism*, there is no coverage under this Coverage Form.

**2. Exception Covering Certain Fire Losses**

The following exception to the Exclusion Of Terrorism applies only if indicated and as indicated in the Schedule of this endorsement.

If *terrorism* results in fire, we will pay for the loss or damage caused by that fire, subject to all applicable policy provisions including the Limit of Insurance on the affected property. Such coverage for fire applies only to direct loss or damage by fire to Covered Property. Therefore, for example, the coverage does not apply to insurance provided under Business Income and/or Extra Expense coverages or endorsements that apply to those coverages.

**3. Application Of Other Exclusions**

When the Exclusion Of Terrorism applies in accordance with the terms of Paragraph 1a or 1b, such exclusion applies without regard to the Nuclear Hazard Exclusion in this Coverage Form.

**C. The Business Liability and Medical Expenses Coverage Form is amended as follows:**

**1. The following definition is added and applies under this endorsement wherever the phrase any injury or damage, is shown in italics:**

*"Any injury or damage"* means any injury or damage covered under this Coverage Form or any applicable endorsement, and includes but is not limited to *bodily injury, property damage, personal injury, advertising injury or personal and advertising injury*, as may be defined under this Coverage Form or any applicable endorsement.

**2. The following exclusion is added:**

**EXCLUSION OF TERRORISM**

We will not pay for *any injury or damage* caused directly or indirectly by *terrorism*, including action in hindering or defending against an actual or expected incident of *terrorism*. *Any injury or damage* is excluded regardless of any other cause or event that contributes concurrently or in any sequence to such injury or damage. **But this exclusion applies only when one or more of the following are attributed to an incident of *terrorism*:**

- a. The *terrorism* is carried out by means of the dispersal or application of radioactive material, or through the use of a nuclear weapon or device that involves or produces a nuclear reaction, nuclear radiation or radioactive contamination; or
- b. Radioactive material is released, and it appears that one purpose of the *terrorism* was to release such material; or
- c. The *terrorism* is carried out by means of the dispersal or application of pathogenic or poisonous biological or chemical materials; or
- d. Pathogenic or poisonous biological or chemical materials are released, and it appears that one purpose of the *terrorism* was to release such materials; or
- e. The total of insured damage to all types of property exceeds \$25,000,000. In determining whether the \$25,000,000 threshold is exceeded, we will include all insured damage sustained by property of all persons and entities affected by the *terrorism* and business interruption losses sustained by owners or occupants of the damaged property. For the purpose of this provision, insured damage means damage that is covered by any insurance plus damage that would be covered by any insurance but for the application of any terrorism exclusions; or
- f. Fifty or more persons sustain death or serious physical injury. For the pur-

poses of this provision, serious physical injury means:

- (1) Physical injury that involves a substantial risk of death; or
- (2) Protracted and obvious physical disfigurement; or
- (3) Protracted loss of or impairment of the function of a bodily member or organ.

Multiple incidents of *terrorism* which occur within a 72-hour period and appear to be carried out in concert or to have a related purpose or common leadership will be deemed to be one incident, for the purpose of determining whether the thresholds in Paragraph 2e or 2f are exceeded.

With respect to this Exclusion, Paragraphs 2e and 2f describe the threshold used to measure the magnitude of an incident of *terrorism* and the circumstances in which the threshold will apply, for the purpose of determining whether this Exclusion will apply to that incident. When the Exclusion applies to an incident of *terrorism*, there is no coverage under this Coverage Form.

- D. The following provision is added to the Bis-Pak Property Coverage Form and the Bis-Pak Business Liability and Medical Expenses Coverage Form:

The terms and limitations of any terrorism exclusion, or the inapplicability or omission of a terrorism exclusion, do not serve to create coverage for loss or injury or damage that is otherwise excluded under this Policy.

#### SCHEDULE

The Exception Covering Certain Fire Losses (Paragraph B2) applies to property located in the following states:

Illinois  
Iowa  
Maine  
Missouri  
Wisconsin

#### SNOW PLOW PRODUCTS - COMPLETED OPERATIONS HAZARD COVERAGE

CB-1416(1-10)

This endorsement modifies insurance provided under the following:

BIS-PAK BUSINESS LIABILITY AND MEDICAL EXPENSES COVERAGE FORM

The following exception is added to Exclusion 1g Aircraft, Auto or Watercraft:

This exclusion does not apply to *bodily injury* or *property damage* that:

- (a) Is included in the *products-completed operations hazard*; and
- (b) Arises out of the use of any *auto* for snow or ice removal operations.



**PENNSYLVANIA CHANGES**

CB-0142(1-06)

This endorsement modifies insurance provided under the following:

**BIS-PAK COVERAGE PART**

- A. The Deluxe Bis-Pak Property Coverage Form is amended as follows:

1. The following is added to paragraph 5 Loss Payment and Valuation Property Loss Conditions and supersedes any provision to the contrary.

**Notice Of Acceptance Or Denial Of Claim**

1. Except as provided in 3 below, we will give you notice, within 15 working days after we receive a properly executed proof of loss, that we:
  - a. Accept your claim;
  - b. Deny your claim; or
  - c. Need more time to determine whether your claim should be accepted or denied.

If we deny your claim, such notice will be in writing, and will state any policy provision, condition or exclusion used as a basis for the denial.

If we need more time to determine whether your claim should be accepted or denied, the written notice will state the reason why more time is required.

2. If we have not completed our investigation, we will notify you again in writing, within 30 days after the date of the initial notice as provided in 1c above, and thereafter every 45 days. The written notice will state why more time is needed to investigate your claim and when you may expect us to reach a decision on your claim.
3. The notice procedures in 1 and 2 above do not apply if we have a reasonable basis, supported by specific information, to suspect that an insured has fraudulently caused or contributed to the loss by arson or other illegal activity. Under such circumstances, we will notify you of the disposition of your claim within a period of time reasonable to allow full investigation of the claim, after we receive a properly executed proof of loss.
2. The following is added to any provision which uses the term actual cash value:
 

Actual cash value is calculated as the amount it would cost to repair or replace Covered Property, at the time of loss or damage, with material of like kind or quality, subject to a deduction for deterioration, depreciation and obsolescence. Actual cash

value applies to valuation of Covered Property regardless of whether that property has sustained a partial or total loss or damage.

The actual cash value of the lost or damaged property may be significantly less than its replacement cost.

- B. The Bis-Pak Common Policy Conditions is amended as follows:

1. Paragraph A Cancellation is replaced by the following:

**A. Cancellation**

1. The First Named Insured shown in the Declarations may cancel this policy by writing or giving notice of cancellation.

**2. Cancellation Of Policies In Effect For Less Than 60 Days**

We may cancel this policy by mailing or delivering to the First Named Insured written notice of cancellation at least 30 days before the effective date of cancellation.

**3. Cancellation Of Policies In Effect For 60 Days Or More**

If this policy has been in effect for 60 days or more or if this policy is a renewal of a policy we issued, we may cancel this policy only for one or more of the following reasons:

- a. You have made a material misrepresentation which affects the insurability of the risk. Notice of cancellation will be mailed or delivered at least 15 days before the effective date of cancellation.
- b. You have failed to pay a premium when due, whether the premium is payable directly to us or our agents or indirectly under a premium finance plan or extension of credit. Notice of cancellation will be mailed at least 15 days before the effective date of cancellation.
- c. A condition, factor or loss experience material to insurability has changed substantially or a substantial condition, factor or loss experience material to insurability has become known during the policy period. Notice of cancellation will be mailed or delivered at least 60 days before the effective date of cancellation.

- d. Loss of reinsurance or a substantial decrease in reinsurance has occurred, which loss or decrease, at the time of cancellation, shall be certified to the Insurance Commissioner as directly affecting in-force policies. Notice of cancellation will be mailed or delivered at least 60 days before the effective date of cancellation.
- e. Material failure to comply with policy terms, conditions or contractual duties. Notice of cancellation will be mailed or delivered at least 60 days before the effective date of cancellation.
- f. Other reasons that the Insurance Commissioner may approve. Notice of cancellation will be mailed or delivered at least 60 days before the effective date of cancellation.

This policy may also be cancelled from inception upon discovery that the policy was obtained through fraudulent statements, omissions or concealment of facts material to the acceptance of the risk or to the hazard assumed by us.

- 4. We will mail or deliver our notice to the First Named Insured's last mailing address known to us. Notice of cancellation will state the specific reasons for cancellation.
  - 5. Notice of cancellation will state the effective date of cancellation. The policy period will end on that date.
  - 6. If this policy is cancelled, we will send the First Named Insured any premium refund due. If we cancel, the refund will be pro rata and will be returned within 10 business days after the effective date of cancellation. If the First Named Insured cancels, the refund may be less than pro rata and will be returned within 30 days after the effective date of cancellation. The cancellation will be effective even if we have not made or offered a refund.
  - 7. If notice is mailed, it will be by registered or first class mail. Proof of mailing will be sufficient proof of notice.
2. Paragraph K Transfer Of Your Rights And Duties Under This Policy is replaced by the following:

#### **K. Transfer Of Your Rights And Duties Under This Policy**

Your rights and duties under this policy may not be transferred without our written consent except in the case of death of an individual Named Insured.

If you die, your rights and duties will be transferred to your legal representative but only while acting within the scope of duties as your legal representative. Until your legal representative is appointed, anyone having proper temporary custody of your property will have your rights and duties but only with respect to that property.

If you die, this policy will remain in effect as provided in 1 or 2 below, whichever is later:

- 1. For 180 days after your death regardless of the policy period shown in the Declarations, unless the insured property is sold prior to that date; or
- 2. Until the end of the policy period shown in the Declarations, unless the insured property is sold prior to that date.

Coverage during the period of time after your death is subject to all provisions of this policy including payment of any premium due for the policy period shown in the Declarations and any extension of that period.

- 3. The following paragraphs are added and supersede any provisions to the contrary:

##### **Nonrenewal**

If we decide not to renew this policy, we will mail or deliver written notice of nonrenewal, stating the specific reasons for nonrenewal, to the First Named Insured at least 60 days before the expiration date of the policy.

##### **Increase Of Premium**

If we increase your renewal premium, we will mail or deliver to the First Named Insured written notice of our intent to increase the premium at least 30 days before the effective date of the premium increase.

Any notice of nonrenewal or renewal premium increase will be mailed or delivered to the First Named Insured's last known address. If notice is mailed, it will be by registered or first class mail. Proof of mailing will be sufficient proof of notice.



**LOSS PAYABLE CLAUSES**

CB-1203(1-10)

This endorsement modifies insurance provided under the following:

**DELUXE BIS-PAK PROPERTY COVERAGE FORM**

Nothing in this endorsement increases the applicable Limit of Insurance. We will not pay any Loss Payee more than their financial interest in the Covered Property, and we will not pay more than the applicable Limit of Insurance on the Covered Property.

The following is added to the Loss Payment and Valuation Loss Condition, as indicated in the Schedule:

**1. Loss Payable Clause**

For Covered Property in which both you and a Loss Payee, shown in the Schedule, have an insurable interest, we will:

- a. Adjust losses with you; and
- b. Pay any claim for loss or damage jointly to you and the Loss Payee, as interests may appear.

**2. Lender's Loss Payable Clause**

- a. The Loss Payee shown in the Schedule is a creditor, including a mortgage holder or trustee, whose interest in that Covered Property is established by such written instruments as:

- (1) Warehouse receipts;
- (2) A contract for deed;
- (3) Bills of lading;
- (4) Financing statements; or
- (5) Mortgages, deeds of trust, or security agreements.

- b. For Covered Property in which both you and a Loss Payee have an insurable interest:

- (1) We will pay for covered loss or damage to each Loss Payee in their order of precedence, as interests may appear.
- (2) The Loss Payee has the right to receive loss payment even if the Loss Payee has started foreclosure for similar action on the Covered Property.
- (3) If we deny your claim because of your acts or because you have failed to comply with the terms of this policy, the Loss Payee will still have the right to receive loss payment if the Loss Payee:
  - (a) Pays any premium due under this policy at our request if you have failed to do so;
  - (b) Submits a signed, sworn proof of loss within 60 days after receiving notice from us of your failure to do so; and

- (c) Has notified us of any change in ownership, occupancy or substantial change in risk known to the Loss Payee.

All of the terms of the Bis-Pak Property Coverage Form will then apply directly to the Loss Payee.

- (4) If we pay the Loss Payee for any loss or damage and deny payment to you because of your acts or because you have failed to comply with the terms of this policy:

- (a) The Loss Payee's rights will be transferred to us to the extent of the amount we pay; and
- (b) The Loss Payee's right to recover the full amount of the Loss Payee's claim will not be impaired.

At our option, we may pay to the Loss Payee the whole principal on the debt plus any accrued interest. In this event, you will pay your remaining debt to us.

- c. If we cancel this policy, we will give written notice to the Loss Payee at least:

- (1) Ten days before the effective date of cancellation if we cancel for your non-payment of premium; or
- (2) Thirty days before the effective date of cancellation if we cancel for any other reason.

- d. If we do not renew this policy, we will give written notice to the Loss Payee at least 10 days before the expiration date of this policy.

- e. If notice is mailed, proof of mailing will be sufficient proof of notice.

**3. Contract Of Sale Clause**

- a. The Loss Payee shown in the Schedule is a person or organization with whom you have entered into a contract for the sale of Covered Property.

- b. For Covered Property in which both you and the Loss Payee have an insurable interest, we will:

- (1) Adjust losses with you; and
- (2) Pay any claim for loss or damage jointly to you and the Loss Payee, as interests may appear.

- c. The following is added to the Other Insurance Bis-Pak Common Policy Condition:

For Covered Property that is the subject of a Contract of Sale, the word "you" includes the Loss Payee.

**4. Building Owner Loss Payable Clause**

- a. The Loss Payee shown in the Schedule is the owner of the described building, in which you are a tenant.
- b. We will adjust losses to the described building with the Loss Payee. Any loss payment

made to the Loss Payee will satisfy your claims against us for the owner's property.

- c. We will adjust losses to tenant's improvements and betterments with you, unless the lease provides otherwise.

SCHEDULE				
Premises Number	Building Number	Description of Property		
001	001	BUSINESS ASSETS		
Premises Number	Building Number	Loss Payee (Name and Address)	Loan Number	Applicable Clause
001	001	BANK OF BIRD IN HAND ISAOA 309 N RONKS RD BIRD IN HAND PA 17505		LENDER'S LOSS PAYABLE

**PENNSYLVANIA CHANGES - DEFENSE COSTS**

IL-0120R(3-14)

This endorsement modifies insurance provided under the following:

BIS-PAK COVERAGE PART

COMMERCIAL AUTOMOBILE COVERAGE PART

COMMERCIAL GENERAL LIABILITY COVERAGE PART

COMMERCIAL EXCESS LIABILITY COVERAGE PART

COMMERCIAL PROPERTY COVERAGE PART - LEGAL LIABILITY COVERAGE FORM

COMMERCIAL PROPERTY COVERAGE PART - MORTGAGEHOLDER'S ERRORS AND OMISSIONS COVERAGE FORM

EMPLOYEE BENEFITS LIABILITY COVERAGE PART

EMPLOYMENT-RELATED PRACTICES LIABILITY COVERAGE PART

ERRORS AND OMISSIONS COVERAGE PART

LIQUOR LIABILITY COVERAGE FORM

OWNERS AND CONTRACTORS PROTECTIVE LIABILITY COVERAGE FORM

PRODUCT WITHDRAWAL COVERAGE PART

PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE FORM

RAILROAD PROTECTIVE LIABILITY COVERAGE FORM

- A. The provisions of paragraph B are added to all Insuring Agreements that set forth a duty to defend under:

- Section I of the Bis-Pak, Commercial General Liability, Commercial Excess Liability, Errors And Omissions, Employment-Related Practices Liability, Liquor Liability, Owners And Contractors Protective Liability, Product Withdrawal, Products/Completed Operations

Liability, and Railroad Protective Liability Coverage Forms or Parts;

- Section II - Liability Coverage in paragraph A Coverage under the Business Auto, Garage and Motor Carrier Coverage Forms;
- Section A - Coverage under the Legal Liability Coverage Form;
- Coverage C - Mortgageholder's Liability under the Mortgageholder's Errors And Omissions Coverage Form; and
- Coverage, paragraph 1, under Employee Benefits Liability Coverage Form.

Paragraph B also applies to any other provision in the policy that sets forth a duty to defend.

- B. If we initially defend an insured ("insured") or pay for an insured's ("insured's") defense but later determine that none of the claims ("claims"), for which we provided a defense or defense costs, are covered under this insurance, we have the right to reimbursement for the defense costs we have incurred.

The right to reimbursement under this provision will only apply to the costs we have incurred after we notify you in writing that there may not be coverage and that we are reserving our rights to terminate the defense or the payment of defense costs and to seek reimbursement for defense costs.

**EXCLUSION OF CERTIFIED ACTS OF TERRORISM**

CB-7297(1-15)

This endorsement modifies insurance provided under the following:

**BIS-PAK COVERAGE PART**

**A.** The following provisions are added and apply to Property and Liability Coverages if applicable:

**1.** The following definition is added with respect to the provisions of this endorsement:

"*Certified act of terrorism*" means an act that is certified by the Secretary of the Treasury, in accordance with the provisions of the federal Terrorism Risk Insurance Act, to be an act of terrorism pursuant to such Act. The criteria contained in the Terrorism Risk Insurance Act for a *certified act of terrorism* include the following:

- a. The act resulted in insured losses in excess of \$5 million in the aggregate, attributable to all types of insurance subject to the Terrorism Risk Insurance Act; and
- b. The act is a violent act or an act that is dangerous to human life, property or infrastructure and is committed by an individual or individuals as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion.

**2.** The terms and limitations of any terrorism exclusion, or the inapplicability or omission of a terrorism exclusion, do not serve to create coverage for loss or injury or damage that is otherwise excluded under this Policy.

**B.** The following provisions are added to the Deluxe Bis-Pak Property Coverage Form:

**1.** The following exclusion is added:

**CERTIFIED ACT OF TERRORISM EXCLUSION**

We will not pay for loss or damage caused directly or indirectly by a *certified act of terrorism*. Such loss or damage is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the loss.

**2. Exception Covering Certain Fire Losses**

The following exception to the exclusion in Paragraph B1 applies only if indicated and as indicated in the Schedule of this endorsement.

If a *certified act of terrorism* results in fire, we will pay for the loss or damage caused by that fire. Such coverage for fire applies only to direct loss or damage by fire to Covered Property. Therefore, for example, the coverage does not apply to insurance provided under the Business Income and Extra Expense Additional Coverage.

If aggregate insured losses attributable to terrorist acts certified under the Terrorism Risk Insurance Act exceed \$100 billion in a calendar year and we have met our insurer deductible under the Terrorism Risk Insurance Act, we shall not be liable for the payment of any portion of the amount of such losses that exceeds \$100 billion, and in such case insured losses up to that amount are subject to pro rata allocation in accordance with procedures established by the Secretary of the Treasury.

**C.** The following provision is added to the Bis-Pak Business Liability and Medical Expenses Coverage Form:

**1.** The following exclusion is added:

This insurance does not apply to:

**TERRORISM**

*Any injury or damage* arising, directly or indirectly, out of a *certified act of terrorism*.

**2.** The following definition is added:

For the purposes of this endorsement, "*any injury or damage*" means any injury or damage covered under any Coverage Form to which this endorsement is applicable, and includes but is not limited to *bodily injury, property damage, personal and advertising injury* as may be defined in any applicable Coverage Form.

**SCHEDULE**

The **Exception Covering Certain Fire Losses** (Paragraph B2) applies to property located in the following states, if covered under the Bis-Pak Coverage Part:

States  
 Illinois  
 Iowa  
 Maine  
 Missouri  
 Wisconsin

**EXCLUSION - UNMANNED AIRCRAFT**

CB-7406(6-15)

This endorsement modifies insurance provided under the following:

**BIS-PAK LIABILITY AND MEDICAL EXPENSES COVERAGE FORM**

**A. Exclusion 1g is replaced by the following:**

This insurance does not apply to:

**g. Aircraft, Auto Or Watercraft**

**(1) Unmanned Aircraft**

*Bodily injury, property damage, or personal and advertising injury* arising out of the ownership, maintenance, use or entrustment to others of any aircraft that is an *unmanned aircraft*. Use includes operation and *loading or unloading*.

This paragraph g(1) applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the *occurrence* which caused the *bodily injury, property damage, or personal and advertising injury* involved the ownership, maintenance, use or entrustment to others of any aircraft that is an *unmanned aircraft*.

This paragraph g(1) does not apply to:

- a. The use of another's advertising idea in your *advertisement*; or
- b. Infringing upon another's copyright trade dress or slogan in your *advertisement*.

**(2) Aircraft (Other Than Unmanned Aircraft), Auto Or Watercraft**

*Bodily injury or property damage* arising out of the ownership, maintenance, use or entrustment to others of any aircraft (other than *unmanned aircraft*), *auto* or *watercraft* owned or operated by or rented or loaned to any insured. Use includes operation and *loading or unloading*.

This paragraph g(2) applies even if the claims allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the *occurrence* which caused the *bodily injury or property damage* involved the ownership,

maintenance, use or entrustment to others of any aircraft (other than *unmanned aircraft*), *auto* or *watercraft* that is owned or operated by or rented or loaned to any insured.

This paragraph g(2) does not apply to:

- (a) A *watercraft* while ashore on premises you own or rent;
- (b) A *watercraft* you do not own that is:
  - (i) Less than 51 feet long; and
  - (ii) Not being used to carry persons or property for a charge;
- (c) Parking an *auto* on, or on the ways next to, premises you own or rent, provided the *auto* is not owned by or rented or loaned to you or the insured;
- (d) Liability assumed under any *insured contract* for the ownership, maintenance or use of aircraft or *watercraft*; or
- (e) *Bodily injury or property damage* arising out of:
  - (i) The operation of machinery or equipment that is attached to, or part of, a land vehicle that would qualify under the definition of *mobile equipment* if it were not subject to a compulsory or financial responsibility law or other motor vehicle insurance or motor vehicle registration law where it is licensed or principally garaged; or
  - (ii) The operation of any of the machinery or equipment listed in paragraph f(2) or f(3) of the definition of *mobile equipment*.

**B. The following definition is added to the Liability and Medical Expenses Definitions section:**

"Unmanned aircraft" means an aircraft that is not:

1. Designed;
2. Manufactured; or
3. Modified after manufacture;

to be controlled directly by a person from within or on the aircraft.

**CIVIL AUTHORITY CHANGE**

**CB-7410(8-15)**

This endorsement modifies insurance provided under the following:

DELUXE BIS-PAK PROPERTY COVERAGE FORM

Paragraph 5h(1) Civil Authority under Property Coverages is replaced by the following:

**h. Civil Authority**

- (1) Access to the area immediately surrounding the damaged property is prohibited by civil authority as a result of the damage, and the described premises are within the area.



## EMPLOYMENT-RELATED PRACTICES EXCLUSION

CB-0417(1-10)

This endorsement modifies insurance provided under the following:

BIS-PAK BUSINESS LIABILITY AND MEDICAL EXPENSES COVERAGE FORM

The following exclusion is added:

1. This insurance does not apply to *bodily injury* or *personal and advertising injury* to:
  - a. A person arising out of any:
    - (1) Refusal to employ that person;
    - (2) Termination of that person's employment; or
    - (3) Employment-related practices, policies, acts or omissions such as coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation, discrimination or malicious prosecution directed at that person; or

- b. The spouse, child, parent, brother or sister of that person as a consequence of *bodily injury* or *personal and advertising injury* to that person at whom any of the employment-related practices described in paragraphs (1), (2) or (3) above is directed.
2. The Employment-Related Practices Exclusion applies:
  - a. Whether the injury-causing event described in paragraph (1), (2) or (3) above occurs before employment, during employment or after employment of that person;
  - b. Whether the insured may be liable as an employer or in any other capacity; and
  - c. To any obligation to share damages with or repay someone else who must pay damages because of the injury.

**EXCLUSION - ACCESS OR DISCLOSURE OF CONFIDENTIAL OR PERSONAL INFORMATION AND DATA-RELATED LIABILITY - WITH LIMITED BODILY INJURY EXCEPTION**

CB-1504(5-14)

This endorsement modifies insurance provided under the following:

BIS-PAK BUSINESS LIABILITY AND MEDICAL EXPENSES COVERAGE FORM

**A. Exclusion 1s is replaced by the following:**

This insurance does not apply to:

**s. Access Or Disclosure Of Confidential Or Personal Information And Data-related Liability**

- (1) Damages, other than damages because of *personal and advertising injury*, arising out of any access to or disclosure of any person's or organization's confidential or personal information, including patents, trade secrets, processing methods, customer lists, financial information, credit card information, health information or any other type of non-public information; or

- (2) Damages arising out of the loss of, loss of use of, damage to, corruption of, inability to access, or inability to manipulate electronic data.

This exclusion applies even if damages are claimed for notification costs, credit monitoring expenses, forensic expenses, public relations expenses or any other loss, cost or expense incurred by you or others arising out of that which is described in paragraph (1) or (2) above.

However, unless paragraph (1) above applies, this exclusion does not apply to damages because of *bodily injury*.

As used in this exclusion, electronic data means information, facts or computer pro-

grams stored as or on, created or used on, or transmitted to or from computer software (including systems and applications software), on hard or floppy disks, CD-ROMs, tapes, drives, cells, data processing devices or any other repositories of computer software which are used with electronically controlled equipment. The term computer programs, referred to in the foregoing description of electronic data, means a set of related electronic instructions which direct the operations and functions of a computer or device connected to it, which enable the computer or device to receive, process, store, retrieve or send data.

**B. The following is added to Exclusions 1p:**

This insurance does not apply to:

**p. Personal And Advertising Injury**

*Personal and advertising injury:*

Arising out of any access to or disclosure of any person's or organization's confidential or personal information, including patents, trade secrets, processing methods, customer lists, financial information, credit card information, health information or any other type of nonpublic information.

This exclusion applies even if damages are claimed for notification costs, credit monitoring expenses, forensic expenses, public relations expenses or any other loss, cost or expense incurred by you or others arising out of any access to or disclosure of any person's or organization's confidential or personal information.

**NOTICE OF CANCELLATION ENDORSEMENT**

IL-7002(10-90)

All Coverage Parts included in this policy are subject to the following condition:

If we cancel this policy, for any reason other than

nonpayment of premium, we will mail advance notice to the person(s) or organization(s) as shown in the Schedule.

**SCHEDULE**

Person or Organization (Name and Address)	Advance Notice (Days)
THE RYLAND GROUP & ITS SUBSIDIARIES PO BOX 91149 AUSTIN TX 78709	30

**EXCLUSION - HABITATIONAL EXTERIOR FINISH SYSTEMS**

CB-7237(8-12)

This endorsement modifies insurance provided under the following:

BIS-PAK BUSINESS LIABILITY AND MEDICAL EXPENSES COVERAGE FORM

1. The following exclusion is added:

This insurance does not apply to *bodily injury* or *property damage* included in the *Products-completed operations hazard* or to *personal and advertising injury* arising out of:

- a. The design, manufacture, sale, service, handling, construction, fabrication, preparation, installation, application, maintenance, disposal or repair, including remodeling, service, correction or replacement of an *exterior finish system* or any part thereof;
- b. The application or use of conditioners, primers, accessories, flashing, coatings, caulking or sealant in connection with an *exterior finish system*;
- c. Any method or procedure used to correct problems with an installed or partially installed *exterior finish system*; or
- d. Any work or operations performed on or to an *exterior finish system* or any component thereof or on or to a building or structure to which an *exterior finish system* attaches that results, directly or indirectly, in the intrusion of water or moisture, including any resulting fungus, mold, mildew, virus or bacteria and any mycotoxins, spores, scents or byproducts thereof, into or on any part of the building or structure on which you performed such work or operations.

This exclusion applies only if the *exterior finish system* is or was attached to a building or structure used solely for *habitational* purposes.

This exclusion applies to *bodily injury*, *property*

*damage*, *personal and advertising injury*:

- a. Arising out of work or operations, as described in 1 above, whether performed by you or on your behalf.
  - b. For which you assume liability in a contract or agreement, regardless of whether such contract or agreement is an *insured contract*.
2. The following is added to Liability and Medical Expenses Definitions:
- a. "*Exterior finish system*" includes, but is not limited to, an exterior insulation and finish system (EIFS), direct-applied exterior finish system (DEFS), synthetic stucco or similar system that is an exterior cladding or finish system used on a building or structure consisting of:
    - (1) A rigid or semi-rigid insulation board made of expanded polystyrene or other materials or a rigid or semi-rigid substrate;
    - (2) The adhesive and/or mechanical fasteners used to attach the insulation board to substrate or the substrate to the structure including any water-durable exterior wall substrate;
    - (3) A reinforced or unreinforced base coat or mesh;
    - (4) A finish coat providing surface texture to which color may be added; and
    - (5) Any flashing, caulking or sealant used with the system for any purpose.
  - b. "*Habitational*" means single or multifamily housing, including apartments, condominiums, townhouses or planned unit developments.

**ASBESTOS EXCLUSION**

IL-7012(3-14)

This endorsement modifies insurance provided under the following:

BIS-PAK BUSINESS LIABILITY AND MEDICAL EXPENSE COVERAGE FORM

COMMERCIAL AUTO COVERAGE PART

COMMERCIAL GENERAL LIABILITY COVERAGE PART

DIRECTORS' AND OFFICERS' LIABILITY COVERAGE PART

EMPLOYEE BENEFITS LIABILITY COVERAGE PART

ERRORS AND OMISSIONS COVERAGE PART

GARAGE COVERAGE FORM

LIQUOR LIABILITY COVERAGE FORM

OWNERS AND CONTRACTORS PROTECTIVE LIABILITY COVERAGE FORM

POLLUTION LIABILITY COVERAGE FORM

PRODUCT WITHDRAWAL COVERAGE PART

PRODUCTS-COMPLETED OPERATIONS LIABILITY COVERAGE FORM

RAILROAD PROTECTIVE LIABILITY COVERAGE FORM

The following exclusion is added:

**Asbestos**

This insurance does not apply to any *bodily injury* or *property damage* arising out of activities related to, but not limited to, manufacture, mining, storage, distribution, installation, sale, use, exposure to, service, testing for, repair, containment or removal of asbestos, asbestos fibers, asbestos dust, or products containing asbestos.

**AMENDMENT TO DEFINITION OF OCCURRENCE**

**IL-7092(2-11)**

This endorsement modifies insurance provided under the following:

BIS-PAK BUSINESS LIABILITY AND MEDICAL EXPENSES COVERAGE FORM

COMMERCIAL GENERAL LIABILITY COVERAGE FORM

PRODUCTS-COMPLETED OPERATIONS LIABILITY COVERAGE FORM

The definition of Occurrence is replaced by the following:

*Occurrence* means an accident, including continuous or repeated exposure to substantially the same gen-

eral harmful conditions. *Occurrence* includes:

- A. *Property damage to your work* if the damaged work or the work out of which the damage arises was performed on your behalf by a subcontractor and the *property damage to your work* is included in the *products-completed operations hazard*;
- B. *Property damage to property other than your work* that arises out of *your work*.

All other terms, exclusions, limitations and conditions of the policy remain unchanged.

# EXHIBIT B

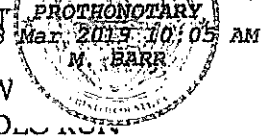
# EXHIBIT B



BROWN MCGARRY NIMEROFF LLC  
BY: Matthew E. McGuire, Esquire  
Attorney I.D. No. 86822  
158 W. Gay Street, Suite 200  
West Chester, Pennsylvania 19380  
(610) 755-3311

ATTORNEYS FOR DEFENDANT  
WOODSTONE HOMES, INC.,  
WYNCOTE HOLDINGS, L.P., W  
VINCENT CAPITAL CORP., POLO RUN  
CAPITAL CORPORATION AND JOHN  
BACHICH

Filed and Attested by



PAUL N. EMERY and GEORGEANNA  
M. EMERY

Plaintiffs

vs.

WOODSTONE HOMES, INC.,  
WOODSTONE CUSTOM HOMES, L.P.,  
WYNCOTE HOLDINGS, L.P., WEST  
VINCENT CAPITAL CORP., POLO RUN  
CAPITAL CORPORATION, JOHN  
BACHICH and C. O'BRIEN  
ARCHITECTS, INC.

Defendants

IN THE COURT OF COMMON PLEAS

CHESTER COUNTY, PA

NO. 2017-11332-TT

JURY TRIAL DEMANDED

COPY

NOTICE

TO: AIDAN BRADY STUCCO & STONE  
1201 Fairview Road  
Glenmoore, PA 19343

You have been sued in Court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the Court your defenses or objections to the claims set forth against you.

You are warned that if you fail to do so, the case may proceed without you and a judgment may be entered against you by the Court without further notice for any money claimed in the Complaint or for any other claim or relief requested by the Plaintiff. You may lose money or property or other rights important to you.

**YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.**

**LAWYER REFERRAL SERVICE  
CHESTER COUNTY BAR ASSOCIATION  
15 West Gay Street, Second Floor  
West Chester, PA 19380**

**BROWN MCGARRY NIMEROFF LLC**

**DATE: March 13, 2019**

**BY: /s/ Matthew E. McGuire  
Matthew E. McGuire, Esquire  
Attorney for Defendants Woodstone  
Homes, Inc., Wyncote Holdings, L.P., West  
Vincent Capital Corp., Polo Run Capital  
Corporation and John Bachich**

BROWN MCGARRY NIMEROFF LLC  
BY: Matthew E. McGuire, Esquire  
Attorney I.D. No. 86822  
158 W. Gay Street, Suite 200  
West Chester, Pennsylvania 19380  
(610) 755-3311

ATTORNEYS FOR DEFENDANT  
WOODSTONE HOMES, INC.,  
WYNCOTE HOLDINGS, L.P., W  
VINCENT CAPITAL CORP., POLO RUN  
CAPITAL CORPORATION AND JOHN  
BACHICH



PAUL N. EMERY and GEORGEANNA  
M. EMERY

Plaintiffs

vs.

WOODSTONE HOMES, INC.,  
WOODSTONE CUSTOM HOMES, L.P.,  
WYNCOTE HOLDINGS, L.P., WEST  
VINCENT CAPITAL CORP., POLO RUN  
CAPITAL CORPORATION, JOHN  
BACHICH and C. O'BRIEN  
ARCHITECTS, INC.

Defendants

IN THE COURT OF COMMON PLEAS

CHESTER COUNTY, PA

NO. 2017-11332-TT

JURY TRIAL DEMANDED

**NOTICE**

TO: SAMUEL K. ESH MASONRY  
40 Furnace Road  
Quarryville, PA 17566

You have been sued in Court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the Court your defenses or objections to the claims set forth against you.

You are warned that if you fail to do so, the case may proceed without you and a judgment may be entered against you by the Court without further notice for any money claimed in the Complaint or for any other claim or relief requested by the Plaintiff. You may lose money or property or other rights important to you.

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**LAWYER REFERRAL SERVICE  
CHESTER COUNTY BAR ASSOCIATION  
15 West Gay Street, Second Floor  
West Chester, PA 19380**

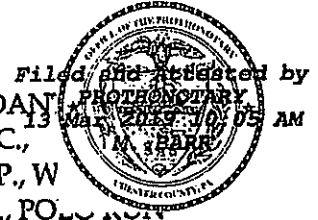
**BROWN MCGARRY NIMEROFF LLC**

**DATE: March 13, 2019**

**BY: /s/ Matthew E. McGuire  
Matthew E. McGuire, Esquire  
Attorney for Defendants Woodstone  
Homes, Inc., Wyncote Holdings, L.P., West  
Vincent Capital Corp., Polo Run Capital  
Corporation and John Bachich**

BROWN MCGARRY NIMEROFF LLC  
BY: Matthew E. McGuire, Esquire  
Attorney I.D. No. 86822  
158 W. Gay Street, Suite 200  
West Chester, Pennsylvania 19380  
(610) 755-3311

ATTORNEYS FOR DEFENDANT  
WOODSTONE HOMES, INC.,  
WYNCOTE HOLDINGS, L.P., W  
VINCENT CAPITAL CORP., POLO RUN  
CAPITAL CORPORATION AND JOHN  
BACHICH



PAUL N. EMERY and GEORGEANNA  
M. EMERY

Plaintiffs

vs.

WOODSTONE HOMES, INC.,  
WOODSTONE CUSTOM HOMES, L.P.,  
WYNCOTE HOLDINGS, L.P., WEST  
VINCENT CAPITAL CORP., POLO RUN  
CAPITAL CORPORATION, JOHN  
BACHICH and C. O'BRIEN  
ARCHITECTS, INC.

Defendants

IN THE COURT OF COMMON PLEAS

CHESTER COUNTY, PA

NO. 2017-11332-TT

JURY TRIAL DEMANDED

NOTICE

TO: ROCKVALE CONSTRUCTION, LLC  
4108 E. Newport Road  
Kinzers, PA 17535

You have been sued in Court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the Court your defenses or objections to the claims set forth against you.

You are warned that if you fail to do so, the case may proceed without you and a judgment may be entered against you by the Court without further notice for any money claimed in the Complaint or for any other claim or relief requested by the Plaintiff. You may lose money or property or other rights important to you.



**YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.**

**LAWYER REFERRAL SERVICE  
CHESTER COUNTY BAR ASSOCIATION  
15 West Gay Street, Second Floor  
West Chester, PA 19380**

**BROWN MCGARRY NIMEROFF LLC**

**DATE: March 13, 2019**

**BY: /s/ Matthew E. McGuire  
Matthew E. McGuire, Esquire  
Attorney for Defendants Woodstone  
Homes, Inc., Wyncote Holdings, L.P., West  
Vincent Capital Corp., Polo Run Capital  
Corporation and John Bachich**

BROWN MCGARRY NIMEROFF LLC  
BY: Matthew E. McGuire, Esquire  
Attorney I.D. No. 86822  
158 W. Gay Street, Suite 200  
West Chester, Pennsylvania 19380  
(610) 755-3311

ATTORNEYS FOR DEFENDANT  
WOODSTONE HOMES, INC.,  
WYNOCOTE HOLDINGS, L.P., W  
VINCENT CAPITAL CORP., POLO RUN  
CAPITAL CORPORATION AND JOHN  
BACHICH



PAUL N. EMERY and GEORGEANNA  
M. EMERY

Plaintiffs

vs.

WOODSTONE HOMES, INC.,  
WOODSTONE CUSTOM HOMES, L.P.,  
WYNOCOTE HOLDINGS, L.P., WEST  
VINCENT CAPITAL CORP., POLO RUN  
CAPITAL CORPORATION, JOHN  
BACHICH and C. O'BRIEN  
ARCHITECTS, INC.

Defendants

IN THE COURT OF COMMON PLEAS

CHESTER COUNTY, PA

NO. 2017-11332-TT

JURY TRIAL DEMANDED

RECEIVED  
19 MAR 14 PM 1:00  
CLERK OF COURT  
CHESTER COUNTY, PA

**DEFENDANTS WOODSTONE HOMES, INC., WYNOCOTE HOLDINGS, L.P., AND  
WEST VINCENT CAPITAL CORP.'S JOINDER COMPLAINT AGAINST  
ADDITIONAL DEFENDANTS AIDAN BRADY STUCCO & STONE, SAMUEL K.  
ESH MASONRY, ROCKVALE CONSTRUCTION, LLC AND FISHER BROTHERS  
EXTERIORS**

Defendants Woodstone Homes, Inc., Wyncote Holdings, L.P., and West Vincent Capital Corp., by and through their counsel, Brown McGarry Nimeroff, LLC, brings this cause of action against Additional Defendants Aidan Brady Stucco & Stone, Samuel K. Esh Masonry, Rockvale Construction, LLC and Fisher Brothers Exteriors and in support thereof avers as follows:

1. Plaintiffs Paul N. Emery and Georgeanna M. Emery instituted suit against Defendants Woodstone Homes, Inc., Woodstone Custom Homes, L.P., Wyncote Holdings, L.P., West Vincent Capital Corp., Polo Run Capital Corporation, John Bachich

and C. O'Brien Architects, Inc. by the filing of a Complaint in the Chester County Court of Common Pleas on December 1, 2017.

2. Defendant C. O'Brien Architects, Inc. filed and served its Answer with New Matter and Crossclaims on January 29, 2018.

3. Defendants Woodstone Homes, Inc., Wyncote Holdings, L.P., and West Vincent Capital Corp., filed and served their Answers with New Matter on July 19, 2018.

4. Defendant Woodstone Custom Homes, L.P., Polo Run Capital Corp., and John Bachich filed and served their Answers with New Matter on July 19, 2018.

5. Plaintiffs Paul N. Emery and Georgeanna M. Emery purchased real property known as 221 Essex Court, Oxford, PA 19363 (the "Home") in 2009 from defendant Wyncote Holdings, L.P. Defendant Woodstone Homes, Inc. thereafter built and provided warranty service on the home for Wyncote Holdings, L.P. The Home, now over 10 years old, is part of the larger Wyncote Development.

6. The matter arises out of alleged damages in the way of moisture intrusion issues to the Home. Plaintiff's Complaint includes counts for breach of contract (I-II), breach of implied warranties (III-IV), negligence (V-VI, VIII), unfair trade practices (VII), and corporate veil (IX).

7. Proposed Additional Defendant Aidan Brady Stucco & Stone is a business entity with a business address of 1201 Fairview Road, Glenmoore, PA 19343.

8. Proposed Additional Defendant Aidan Brady Stucco & Stone was retained by Woodstone Homes Inc. as a subcontractor to complete the stucco and water resistant

barrier installation at the Home. Attached as Exhibit "A" are the invoices for Aidan Brady Stucco & Stone's work on the Home.

9. Proposed Additional Defendant Samuel K. Esh Masonry is a business entity with a business address of 40 Furnace Road, Quarryville, PA 17566.

10. Proposed Additional Defendant Samuel K. Esh Masonry was retained by Woodstone Homes Inc. as a subcontractor to complete the brick work and water resistant barrier installation at the Home. Plaintiffs allege that the brick work and water resistant barrier were improperly installed.

11. Proposed Additional Defendant Rockvale Construction, LLC is a business entity with a business address of 4108 E. Newport Rd., Kinzers, PA 17535.

12. Proposed Additional Defendant Rockvale Construction, LLC was retained by Woodstone Homes Inc. as a subcontractor to complete the window installation at the Home. Plaintiffs allege that the windows were improperly installed.

13. Proposed Additional Defendant Fisher Brothers Exteriors is a business entity with a business address of 249 Belmont Road, Paradise, PA 17562.

14. Proposed Additional Defendant Fisher Brothers Exteriors was retained by Woodstone Homes Inc. as a subcontractor to complete the roofing, fascia, soffit, shutters, exterior millwork, installation of water resistant barriers and flashing at the Home. Plaintiffs allege that the roofing, fascia, soffit, shutters, exterior millwork, installation of water resistant barriers and flashing were improperly installed.

15. The damages allegedly suffered by Plaintiffs were proximately caused by the Additional Defendants Aidan Brady Stucco & Stone, Samuel K. Esh Masonry, Rockvale Construction, LLC and Fisher Brothers Exteriors.

**COUNT I  
BREACH OF CONTRACT AGAINST AIDAN BRADY STUCCO & STONE,  
SAMUEL K. ESH MASONRY, ROCKVALE CONSTRUCTION, LLC  
("the Subcontractors")**

16. The preceding paragraphs are incorporated fully herein as if fully set forth.

17. Pursuant to oral agreements with Woodstone Homes Inc., the Subcontractors contracted to provide construction services, as detailed above, for the construction of the building envelope of Plaintiffs' home.

18. To the extent Plaintiffs incurred the damages as alleged, such damages being specifically denied by Woodstone Homes, Inc., Wyncote Holdings, L.P., and West Vincent Capital Corp., such damages were caused in whole or in part by the Subcontractors' breach of their agreements with Woodstone Homes, Inc.

19. Defendants deny any and all liability for the claims asserted in Plaintiffs' Complaint, but if upon adjudication of the claims it is determined that any of the work performed by the Subcontractors caused damages, Subcontractors are liable for breach of contract.

20. Defendants claim contribution from the Subcontractors pursuant to the provisions of Pennsylvania's Uniform Contribution Among Joint Tortfeasors Act.



21. Defendants claim common law indemnity from the Subcontractors for any and all damages that may be awarded to Plaintiffs from Defendants, in addition to all costs and fees.

WHEREFORE, Defendants Woodstone Homes, Inc., Wyncote Holdings, L.P., and West Vincent Capital Corp., respectfully request that judgment be entered in their favor and against the Plaintiffs. In the alternative, in the event that judgment is entered in favor of the Plaintiffs and against Defendants Woodstone Homes, Inc., Wyncote Holdings, L.P., and West Vincent Capital Corp., Defendants respectfully request that the Additional Defendants Aidan Brady Stucco & Stone, Samuel K. Esh Masonry, Rockvale Construction, LLC and Fisher Brothers Exteriors be held solely liable for Plaintiffs' damages and/or jointly and severally liable for Plaintiffs' damages and further liable to Defendants Woodstone Homes, Inc., Wyncote Holdings, L.P., and West Vincent Capital Corp., for indemnity and/or contribution resulting from Plaintiffs' causes of action.

**COUNT II**  
**BREACH OF WARRANTY AGAINST AIDAN BRADY STUCCO & STONE,**  
**SAMUEL K. ESH MASONRY, ROCKVALE CONSTRUCTION, LLC**  
**("the Subcontractors")**

22. The preceding paragraphs are incorporated fully herein as if fully set forth.

23. Pursuant to oral agreements with Woodstone Homes Inc., the Subcontractors contracted to provide construction services, as detailed above, for the construction of the building envelope of Plaintiffs' home.

24. The Subcontractors implied, agreed, and warrantied that all of their work would be in compliance with applicable building codes and industry standards.

25. To the extent Plaintiffs incurred the damages as alleged, such damages being specifically denied by Woodstone Homes, Inc., Wyncote Holdings, L.P., and West Vincent Capital Corp., such damages were caused in whole or in part by the Subcontractors' breach of their warranties with Woodstone Homes, Inc.

26. Defendants deny any and all liability for the claims asserted in Plaintiffs' Complaint, but if upon adjudication of the claims it is determined that any of the work performed by the Subcontractors caused damages, Subcontractors are liable for breach of their warranties to Defendants.

27. Defendants claim contribution from the Subcontractors pursuant to the provisions of Pennsylvania's Uniform Contribution Among Joint Tortfeasors Act.

28. Defendants claim common law indemnity from the Subcontractors for any and all damages that may be awarded to Plaintiffs from Defendants, in addition to all costs and fees.

WHEREFORE, Defendants Woodstone Homes, Inc., Wyncote Holdings, L.P., and West Vincent Capital Corp., respectfully request that judgment be entered in their favor and against the Plaintiffs. In the alternative, in the event that judgment is entered in favor of the Plaintiffs and against Defendants Woodstone Homes, Inc., Wyncote Holdings, L.P., and West Vincent Capital Corp., Defendants respectfully request that the Additional Defendants Aidan Brady Stucco & Stone, Samuel K. Esh Masonry, Rockvale Construction, LLC and Fisher Brothers Exteriors be held solely liable for Plaintiffs' damages and/or jointly and severally liable for Plaintiffs' damages and further liable to

Defendants Woodstone Homes, Inc., Wyncote Holdings, L.P., and West Vincent Capital Corp., for indemnity and/or contribution resulting from Plaintiffs' causes of action.

**COUNT III**  
**NEGLIGENCE AGAINST AIDAN BRADY STUCCO & STONE, SAMUEL K. ESH**  
**MASONRY, ROCKVALE CONSTRUCTION, LLC**  
**("the Subcontractors")**

29. The preceding paragraphs are incorporated fully herein as if fully set forth.

30. Pursuant to oral agreements with Woodstone Homes Inc., the Subcontractors contracted to provide construction services, as detailed above, for the construction of the building envelope of Plaintiffs' home.

31. To the extent Plaintiffs incurred the damages as alleged, such damages being specifically denied by Woodstone Homes, Inc., Wyncote Holdings, L.P., and West Vincent Capital Corp., such damages were caused in whole or in part by the Subcontractors' negligence by failing to exercise reasonable care to comply with the applicable code and industry standards while performing their work on Plaintiffs' home.

32. Defendants deny any and all liability for the claims asserted in Plaintiffs' Complaint, but if upon adjudication of the claims it is determined that any of the work performed by the Subcontractors caused damages, Subcontractors are liable for negligence.

33. Defendants claim contribution from the Subcontractors pursuant to the provisions of Pennsylvania's Uniform Contribution Among Joint Tortfeasors Act.

34. Defendants claim common law indemnity from the Subcontractors for any and all damages that may be awarded to Plaintiffs from Defendants, in addition to all costs and fees.

WHEREFORE, Defendants Woodstone Homes, Inc., Wyncote Holdings, L.P., and West Vincent Capital Corp., respectfully request that judgment be entered in their favor and against the Plaintiffs. In the alternative, in the event that judgment is entered in favor of the Plaintiffs and against Defendants Woodstone Homes, Inc., Wyncote Holdings, L.P., and West Vincent Capital Corp., Defendants respectfully request that the Additional Defendants Aidan Brady Stucco & Stone, Samuel K. Esh Masonry, Rockvale Construction, LLC and Fisher Brothers Exteriors be held solely liable for Plaintiffs' damages and/or jointly and severally liable for Plaintiffs' damages and further liable to Defendants Woodstone Homes, Inc., Wyncote Holdings, L.P., and West Vincent Capital Corp., for indemnity and/or contribution resulting from Plaintiffs' causes of action.

**COUNT IV  
INDEMNITY AND CONTRIBUTION AGAINST AIDAN BRADY STUCCO &  
STONE, SAMUEL K. ESH MASONRY, ROCKVALE CONSTRUCTION, LLC  
("the Subcontractors")**

35. The preceding paragraphs are incorporated fully herein as if fully set forth.

36. Pursuant to oral agreements with Woodstone Homes Inc., the Subcontractors contracted to provide construction services, as detailed above, for the construction of the building envelope of Plaintiffs' home.

37. To the extent Plaintiffs incurred the damages as alleged, such damages being specifically denied by Woodstone Homes, Inc., Wyncote Holdings, L.P., and West

Vincent Capital Corp., such damages were caused in whole or in part by the Subcontractors' breach of contract, breach of warranty, and negligence while performing the work on Plaintiffs' home as Subcontractors for Woodstone Homes, Inc.

38. Defendants deny any and all liability for the claims asserted in Plaintiffs' Complaint, but if upon adjudication of the claims it is determined that any of the work performed by the Subcontractors caused damages, Subcontractors are jointly and/or severally liable with the Defendants and/or liable over to the Defendants for contribution and/or indemnifications, for all, or part of Plaintiffs' claims.

39. Defendants claim contribution from the Subcontractors pursuant to the provisions of Pennsylvania's Uniform Contribution Among Joint Tortfeasors Act.

40. Defendants claim common law indemnity from the Subcontractors for any and all damages that may be awarded to Plaintiffs from Defendants, in addition to all costs and fees.

WHEREFORE, Defendants Woodstone Homes, Inc., Wyncote Holdings, L.P., and West Vincent Capital Corp., respectfully request that judgment be entered in their favor and against the Plaintiffs. In the alternative, in the event that judgment is entered in favor of the Plaintiffs and against Defendants Woodstone Homes, Inc., Wyncote Holdings, L.P., and West Vincent Capital Corp., Defendants respectfully request that the Additional Defendants Aidan Brady Stucco & Stone, Samuel K. Esh Masonry, Rockvale Construction, LLC and Fisher Brothers Exteriors be held solely liable for Plaintiffs' damages and/or jointly and severally liable for Plaintiffs' damages and further liable to



Defendants Woodstone Homes, Inc., Wyncote Holdings, L.P., and West Vincent Capital Corp., for indemnity and/or contribution resulting from Plaintiffs' causes of action.

**BROWN MCGARRY NIMEROFF LLC**

DATE: March 13, 2019

BY: /s/ Matthew E. McGuire  
Matthew E. McGuire, Esquire  
Attorney for Defendants Woodstone  
Homes, Inc., Wyncote Holdings, L.P., West  
Vincent Capital Corp., Polo Run Capital  
Corporation and John Bachich

# EXHIBIT A

10/31/2009 21:55

6104583458

BRADY

PAGE 01/02

**Aidan Brady Stucco & Stone**

1201 Fairview Road

Glenmoore

PA 19343

**Invoice**

Date	Invoice #
10/30/2009	3047

<b>Bill To</b>
Woodstone Homes Inc PO. Box 814 Uwehland, PA 19480

		P.O. No.	Terms	Project

Quantity	Description	Rate	Amount
	Lot # 81 Wyncote Holdings, L.P. Stucco color Antique. Stucco side of rear steps.  		

07/07/2009 21:55 6104583458

BRADY

PAGE 01/01

**Aidan Brady Stucco & Stone**

1201 Fairview Road

Glenmoore

PA 19343

**Invoice**

Date	Invoice #
7/7/2009	3027

Billed To
Woodstone Homes Inc
P.O. Box 814
Uwobland, PA 19480

P.O. No.	Terms	Project

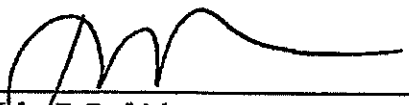
Quantity	Description	Rate	Amount
	Lot # 81 Wynecote, Stucco color Antique Base House 2,700 sf @ 3.15 per sq ft Extra's due to grade and walkup	8,505.00 1,386.00	8,505.00 1,386.00
All work is complete!		<b>Total</b>	<b>\$9,891.00</b>

16486/40

**VERIFICATION**

I, John R. Bachich, of Woodstone Homes, Inc., hereby depose and state that I am authorized to make this verification for the same. I have read the foregoing, and state that the statements made in the foregoing Joinder Complaint, are true and correct to the best of my knowledge, information, and belief. I understand that false statements made herein are subject to the penalties of 18 Pa.C.S.A., § 4904, relating to unsworn falsification to authorities.

DATE: \_\_\_\_\_

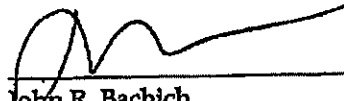
  
\_\_\_\_\_  
John R. Bachich  
President



**VERIFICATION**

I, John R. Bachich, of Wyncote Holdings, L.P., hereby depose and state that I am authorized to make this verification for the same. I have read the foregoing, and state that the statements made in the foregoing Joinder Complaint, are true and correct to the best of my knowledge, information, and belief. I understand that false statements made herein are subject to the penalties of 18 Pa.C.S.A., § 4904, relating to unsworn falsification to authorities.

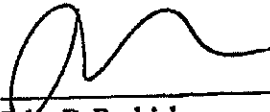
DATE: \_\_\_\_\_

  
\_\_\_\_\_  
John R. Bachich  
President of its sole General Partner

**VERIFICATION**

I, John R. Bachich, of West Vincent Capital Corp., hereby depose and state that I am authorized to make this verification for the same. I have read the foregoing, and state that the statements made in the foregoing Joinder Complaint, are true and correct to the best of my knowledge, information, and belief. I understand that false statements made herein are subject to the penalties of 18 Pa.C.S.A., § 4904, relating to unsworn falsification to authorities.

DATE: \_\_\_\_\_

  
\_\_\_\_\_  
John R. Bachich  
President



Fisher Brothers Exteriors  
249 S. Belmont Road  
Paradise PA 17562

# Invoice

Phone # 717-687-6371


PA CONTRACTORS, LLC 717-687-6371

**Bill To**

Woodstone Custom Homes, L.P.-  
P.O. Box 814  
Uwchland Pa. 19480

Contact ...

Rep=

Customer Phone	Terms	Due Date	P.O. Number	Project
610 458-0157		11/7/2013		
Qty	Description			Amount
	**Fascia Repair Wyncote Lot #81			
1	Removed Existing Fascia Installed 65ft New Rake Fascia Labor & Material			227.50
<div>July 2013</div> <div>2009 Project</div> <div></div> <div>Asa</div> <div>Ref WAS SUB Ltr By</div> <div>FBX</div>				

TERMS - Service charge at the rate of 1 1/2% per month will be charge on all accounts remaining unpaid 30 days after the final invoice. This charge is computed at the annual percentage rate of 18%. Minimum Charge -\$2.00

In the event of legal action hereunder reasonable attorneys fees and court cost will be due from customer as stated on accepted Proposal.

One of the biggest thrills in life comes from doing a job well , and thats our goal !

<b>Total</b>	\$227.50
<b>Payments/Credits</b>	-\$227.50
<b>Balance Due</b>	\$0.00



Fisher Brothers Exteriors  
249 S. Belmont Road  
Paradise PA 17562

Phone # 717-687-6371

PA CONTRACTORS, LLC 717-687-6371

Bill To

Woodstone Custom Homes, L.P.-  
P.O. Box 814  
Uwchland Pa. 19480

Contact ...

# Invoice

Date	Invoice #
12/31/2012	1918

Rep=

Customer Phone	Terms	Due Date	P.O. Number	Project
610 458-0157		12/31/2012		
Qty	Description			Amount
	***REPAIR INVOICES FOR BEL ROSE & WYNCOTE***			
1	Soffit & fascia repair Belose as per Ray Karlton			135.00
1	Replaced three dryer vents @ Wyncote Lot #81 including Azek trim.....as per Scott			190.00

TERMS - Service charge at the rate of 1 1/2% per month will be charge on all accounts remaining unpaid 30 days after the final invoice. This charge is computed at the annual percentage rate of 18%. Minimum Charge -\$2.00

In the event of legal action hereunder reasonable attorneys fees and court cost will be due from customer as stated on accepted Proposal.

One of the biggest thrills in life comes from doing a job well , and thats our goal !

<b>Total</b>	\$325.00
<b>Payments/Credits</b>	-\$325.00
<b>Balance Due</b>	\$0.00

# EXHIBIT C

# EXHIBIT C



April 12, 2019

FISHER BROTHERS EXTERIORS LLC  
ATTN MEL FISHER  
249 SOUTH BELMONT ROAD  
PARADISE PA 17562

Re: Insured: Fisher Brothers Exteriors, LLC  
Claim No.: QJ5529  
Policy No.: Z10986  
Claimants: Woodstone Homes Inc.  
Wyncote Holdings, LP  
West Vincent Capital Corporation  
Date of Loss: 12-01-2017

Dear Mr. Fisher:

I am writing in regard to the above-referenced claim which has been submitted to Acuity Insurance Company ("Acuity"). According to the information that has been provided, Plaintiffs Paul Emery and Georgeanna Emery filed a Complaint in the Chester County Court of Common Pleas, No. 2017-11332-TT, stating claims against Defendants Woodstone Homes Inc., Woodstone Custom Homes, LP, Wyncote Holdings, LP, West Vincent Capital Corp., Polo Run Capital Corporation, John Bachich and C. O'Brien Architects, Inc. Plaintiffs allege in their Complaint that they purchased real property located at 221 Essex Court, Oxford, Pennsylvania from Wyncote Holdings, LP and that Woodstone Homes Inc. thereafter built and provided warranty service on the home. Plaintiffs further allege that they have suffered damages by way of moisture intrusion issues to the home. Defendants Woodstone Homes Inc., Wyncote Holdings, LP and West Vincent Capital Corp. have filed a Joinder Complaint against Fisher Brothers Exteriors, LLC ("Fisher") and other additional defendants, stating claims for breach of contract, breach of warranty, negligence and common law indemnity and contribution. The claims of the Defendants against Fisher now have been submitted to Acuity for potential coverage.

This letter is to provide you with notice that Acuity is investigating the facts of this claim, while conditionally reserving the right to disclaim coverage should it be determined that a denial or partial denial of coverage is warranted. While this investigation continues, Acuity will provide Fisher with a defense of the claims stated in the Joinder Complaint. While there is insufficient information at this time to make a final coverage determination, Acuity notes that certain elements of the claimed damages do not appear to fall within the coverage of the policy and that certain policy exclusions may apply.

---

2800 South Taylor Drive · Sheboygan, WI 53081  
920.458.9131 · 800.242.7666 · 920.458.1618 FAX  
acuity.com



According to the Joinder Complaint, Fisher was retained by Woodstone Homes Inc. as a subcontractor to complete roofing, fascia, soffit, shutters, exterior millwork, water resistant barriers and flashing at Plaintiffs' home. The Joinder Complaint further alleges that Plaintiffs allege that these items were improperly installed resulting in water intrusion into the home.

In view of the foregoing information, Acuity is continuing to investigate this claim subject to a reservation of rights based upon the language in policy number Z10986 which was effective from 01-01-2017 to 01-01-2018 and which states in pertinent part as follows:

### LIABILITY AND MEDICAL EXPENSES COVERAGES

#### 1. Business Liability

- a. We will pay those sums that the insured becomes legally obligated to pay as damages because of *bodily injury, property damage or personal and advertising injury* to which this insurance applies. We will have the right and duty to defend the insured against any suit seeking those damages. However, we will have no duty to defend the insured against any *suit* seeking damages for *bodily injury, property damage or personal and advertising injury* to which this insurance does not apply. We may at our discretion investigate any *occurrence* or any offense and settle any claim or *suit* that may result. But:

- (1) The amount we will pay for damages is limited as described in the Liability and Medical Expenses Limits of Insurance Section; and
- (2) Our right and duty to defend ends when we have used up the applicable Limit of Insurance in the payment of judgments, settlements or medical expenses.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Coverage Extension – Supplementary Payments.

#### b. This insurance applies:

- (1) To *bodily injury or property damage* only if:
  - (a) The *bodily injury or property damage* is caused by an *occurrence* that takes place in the *coverage territory*; and
  - (b) The *bodily injury or property damage* occurs during the policy period.

\* \* \* \* \*

## EXCLUSIONS

### 1. Applicable to Business Liability Coverage

This Insurance does not apply to:

\* \* \* \* \*

#### b. Contractual Liability

*Bodily injury or property damage* for which the insured is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages:

- (1) That the insured would have in the absence of the contract or agreement; or

\* \* \* \* \*

#### m. Damage to Your Work

*Property damage to your work* arising out of it or any part of it and included in the *products-completed operations hazard*.

This exclusion does not apply if the damaged work or the work out of which the damage arises was performed on your behalf by a subcontractor.

\* \* \* \* \*

## AMENDMENT TO DEFINITION OF OCCURRENCE

This endorsement modifies insurance provided under the following:

BIS-PAK BUSINESS LIABILITY AND MEDICAL EXPENSES COVERAGE FORM

\* \* \* \* \*

The definition of Occurrence is replaced by the following:

*Occurrence* means an accident, including continuous or repeated exposure to substantially the same general harmful conditions. *Occurrence* includes:

- A. *Property damage to your work* if the damages work or the work out of which the damage arises was performed on your behalf by a subcontractor and the property damage to *your work* is included in the *products-completed operations hazard*;

- B. *Property damage* to property other than *your work* that arises out of *your work*.

All other terms, exclusions, limitations and conditions of the policy remain unchanged.

\* \* \* \* \*

## PENNSYLVANIA CHANGES – DEFENSE COSTS

This endorsement modifies insurance provided under the following:

### BIS-PAK COVERAGE PART

\* \* \* \* \*

- B. If we initially defend an insured ("*insured*") or pay for an insured's ("*insured's*") defense but later determine that none of the claims ("*claims*"), for which we provided a defense or defense costs, are covered under this insurance, we have the right to reimbursement for the defense costs we have incurred.

The right to reimbursement under this provision will only apply to the costs we have incurred after we notify you in writing that there may not be coverage and that we are reserving our rights to terminate the defense or the payment of defense costs and to seek reimbursement for defense costs.

\* \* \* \* \*

The facts that have been alleged in the Joinder Complaint raise issues of coverage with respect to the damages that are claimed. The policy provides that there is coverage for property damage only if it is caused by an "occurrence" which is defined in part as "an accident". Under Kvaerner Metals Div. of Kvaerner United States Inc. v. Commercial Union Insurance Co., 908 A.2d 888 (2006), the faulty workmanship of an insured does not constitute an "occurrence" and, therefore, the cost to repair or replace work that has been improperly performed does not give rise to insurance coverage. In addition, the policy contains an exclusion for Damage to Your Work.

In addition, it appears that the contractual liability exclusion of the policy precludes coverage for the Breach of Contract and Warranty claims stated in the Joinder Complaint.

Therefore, genuine coverage issues exist and Acuity hereby reserves any and all of its rights to modify or amend its coverage position and assert any defenses and disclaimers based upon any of the policy provisions, definitions, conditions or exclusions whether or not specifically mentioned herein. Furthermore, upon the discovery of any other facts or issues relating to coverage in this matter, Acuity reserves its right to modify or amend its coverage position and assert any defenses based upon any of the policy provisions, definitions, conditions or exclusions whether or not specifically mentioned herein.

Please be advised that this is not a denial of coverage but rather to inform you of potential coverage issues. As stated above, Acuity will provide Fisher with a defense while the investigation is continuing. Please note that pursuant to the policy language quoted above relating to Defense Costs, if it is later determined that none of the claims against Fisher are covered under the policy, Acuity has the right to reimbursement for the defense costs that it has incurred.

Any actions taken by Acuity in the investigation of this matter, or negotiating of a compromised settlement, or making any settlement, or defending this claim, or in any other way acting or failing to act, shall not constitute an admission of liability or an admission of coverage.

Nothing in this or any other communication with any representative of Acuity should be taken as a waiver of any of the policy declarations, terms, definitions, exclusions, conditions or other provisions of the policy.

Please feel free to contact the undersigned if you have any questions.

Very truly yours,

Craig Clifton, CPCU  
Senior Field Claims Representative  
Acuity - A Mutual Insurance Company  
Harrisburg, PA  
Office: 800-242-7666 x2519  
Cell: 717-645-8648